

# UYGHUR TRIBUNAL

## JUDGMENT

### Summary Form

The full document will include all Appendices indicated in the text.

Appendices will contain detail of evidence summarised in the text and some general commentary and argument.

All evidence relied on for the Judgment is already available on the Uyghur Tribunal website.

There is no reason to wait for sight of the Appendices before acting on this Judgment for any inclined to do so.

Names of fact witness are not included in the present text but will be in the full document once any security issues are resolved.

The Tribunal was tasked with considering whether crimes had been committed against Uyghurs, Kazakhs and other Turkic Muslim minorities in Xinjiang. This judgment will refer to this wider group as Uyghurs as shorthand to include those other groups.

All those contributing to the Tribunal's work will be listed in the full document.

### INTRODUCTION

1. This is the Judgment of the Uyghur Tribunal, a people's tribunal, formed to consider allegations that the People's Republic of China (PRC) has committed genocide, crimes against humanity and torture against Uyghur, Kazakh and other ethnic minority citizens in the north west region of China known as Xinjiang or formally the Xinjiang Uygur Autonomous Region or XUAR.<sup>1</sup>
2. No legal or other specialist knowledge is required to understand the Judgment.
3. The allegations are of the gravest human rights violations and international crimes.
4. This Judgment is about possible *state* responsibility for certain crimes. The law on state responsibility is separate from but *in substance* close, or identical, to the law on individual criminal responsibility. The Tribunal has been guided in its work by

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<sup>1</sup> In this judgment 'Xinjiang' will be used to describe the geographical area of concern although it is understood that 'East Turkistan' is the preferred term of Uyghurs and other Turkic peoples in the PRC and diaspora communities. The Tribunal has at all times been neutral in respect of all political, or near-political, issues such as preference for a name and will normally use the term 'Xinjiang', but without converting the term 'East Turkestan' to Xinjiang when the term is used in reports or evidence.

the Genocide Convention, the Convention on Torture and, for alleged crimes against humanity, the 'Rome Statute' of the International Criminal Court.

5. It may be said by lawyers that the law in regard to these crimes and particularly genocide is uncertain, or that the attribution of state responsibility differs from attribution of individual responsibility or that it would be appropriate for the present law to be broadened in scope. But this Tribunal, will not seek to interpret, enlarge or narrow the established law. Instead, acting much like a jury, the Tribunal, working *pro bono*<sup>2</sup>, has heard evidence, has determined which facts are proved and has applied relevant existing law, as advised by experts in the law. That advice has been reduced to the equivalent of what might be said by a judge in a trial providing a direction to be easily understood by a jury. Just as a jury announces its decision and its work is done, so will the work of this Tribunal be done today.
6. Bringing any state to accountability for the type of crimes under consideration is, it is accepted, very different from bringing an individual to account. Neither process is something for the Tribunal to initiate but, if at all, for others to do.
7. One feature of the international legal landscape, relevant whenever genocide is considered is Article 1 of the Genocide Convention which reads:

'The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.'
8. The undertaking, to which 152 countries including the PRC, USA, and UK are committed, is an obligation about which the world's highest court, the International Court of Justice (ICJ), has said:

'In fact, a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.'<sup>3</sup>

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<sup>2</sup> In other parts of the world the term can have different meanings, some of which allow the person providing a *pro-bono* service to be paid. For this Tribunal the UK model of *pro bono publico*, as regularly engaged in by UK lawyers and others, applies and the term means precisely what it says - for the public good entirely without financial return. Funding required for other purposes - witness travel, venue hire, and for some of those working on the Tribunal - came initially from the World Uyghur Congress.

<sup>3</sup> Judgment of the ICJ in *Bosnia v Serbia* paragraph 431  
<https://www.icj-cij.org/public/fles/case-related/91/091-20070226-JUD-01-00-EN.pdf>

9. The duty to act *as soon as a state learns of a genocide* has rarely been acted on. Instead, awareness of the duty may have made states disinclined even to *acknowledge* genocides may be happening to avoid the duty that would drive them to act. That disinclination to follow the Convention, on learning of the allegations against the PRC, may have led to the many reports and opinions - referred to later - pressing governments to do their duty; even to this Tribunal coming into existence.
10. The Tribunal Members, working with no preconceptions, have assessed evidence to decide whether the PRC, a great, powerful and successful nation, has been and is *attacking* with the intent of *destroying a part, or parts*, of its own population.
11. If so, it has done so sometimes in full view on the streets, sometimes behind closed doors, sometimes in hospitals, sometimes in purpose built detention centres and sometimes in people's own homes.
12. These allegations have not been dealt with in a public evidence-based way by the UN, by courts, national or international, or by governments save - without publication of its reasoning - by the US.<sup>4</sup>
13. And so this people's tribunal, like others before it and in response to a request,<sup>5</sup> was willing to assess the allegations. It has done so *because* the allegations have

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<sup>4</sup> President Trump's outgoing Secretary of State Pompeo announced on his last day in office in early 2021 that the PRC had committed genocide against the Uyghurs. President Biden's incoming Secretary of State Blinken adopted the assertion. However nothing has been made public of the evidence on which this assertion has been made or of the reasoning leading to the conclusion about genocide. Its timing, coupled with outgoing President Trump's attitude to the PRC, have allowed some to question whether there was a political component to the decision and announcement. Only sight of the evidence relied on and the reasoning leading to the announcement can dispose of this question. The Tribunal's requests to the US Secretary of State for evidence and reasoning have been denied. The Pompeo/Blinken announcement is of no evidential value to the Tribunal.

<sup>5</sup> The Tribunal is sequential to, but separate and independent from, the Independent China Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China. Sir Geoffrey Nice and Nick Vetch have served on both tribunals. Uyghurs featured in the China Tribunal Judgment to a limited extent. In June 2020 Dolkun Isa, President of the World Uyghur Congress formally requested that Sir Geoffrey Nice establish and chair an independent people's tribunal to investigate 'ongoing atrocities and possible Genocide' against the Uyghurs, Kazakhs and other Turkic Muslim Populations. Dolkun Isa's request was accepted and the terms of his request, as amended to include the word 'Kazakhs', constitute the Tribunal's mandate. All Tribunal Members and some senior Tribunal staff have or are working *pro bono*,

Tribunal membership:

Tim Clark Ex senior partner city law firm, board member, trustee and chair of NGOs

Professor Raminder Kaur, is based in the School of Global Studies at the University of Sussex.

Professor Dame Parveen Kumar, Emeritus Professor of Medicine and Education at Barts

Professor David Linch, Professor of Haematology at University College London.

Professor Ambreena Manji, Professor of Law at Cardiff University

Sir Geoffrey Nice QC (Chair) Barrister; UN Tribunal for former Yugoslavia 1998-2006; Chair China Tribunal

Professor Audrey Osler, Professor of Education at the University of South-Eastern Norway

Catherine Roe, not-for-profit chief executive and consultant

Nick Vetch (Vice Chair), Businessman, Trustee Fund for Global Human Rights.

been left unresolved and *because* there are duties falling on governments, and on all of us, to know the truth or falsity of allegations about fellow humans suffering from the commission of grave human rights violations and breaches of international law.

14. Appendix\_\_\_ deals with why these duties arise and a short history of people's tribunal's appears at Appendix \_\_\_\_.
15. *Had* any other official body or court, domestic or international, determined or sought to determine these issues the Tribunal would have been unnecessary and would not have been formed or would have ceased its work - as it has been made plain from the outset.<sup>6</sup>

### **INITIAL OBSERVATIONS**

16. The Tribunal has borne in mind that the allegations themselves and much of the evidence provided by witnesses came from people predisposed against the PRC, the Chinese Communist Party (CCP) or communism itself. And it would be errant to conceive of the Tribunal's work as the examination of a bad state to see quite how bad it is, as some witnesses may appear to think. Not at all. The PRC and the CCP is an enormous government machine running a vast country with the needs of the world's largest national population to be met. Its own values may be respected save where its actions are contrary to international norms or in breach of international law. Avoiding prejudgment or prejudice may be achieved by thinking of the PRC and CCP as doing good for their people save to the extent that,

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No Member of the Tribunal, Counsel to the Tribunal, members of the management or researchers has any special interest in Uyghurs or Kazakhs or other Turkic Muslim groups in the PRC.

For general logistical reasons, and because of particular difficulties associated with COVID-19, it was decided to have all Tribunal Members resident in the UK and not to have international membership (as had been the case with the China Tribunal). In recruitment of Members of the Tribunal, expressions of interest were sought from people without particular interest in the Uyghur people or in the PRC generally but who, in combination, would be diverse in all possible ways and who were willing to deal with the unresolved allegations.

Uyghur Tribunal *pro bono* senior management/staff:

Hamid Sabi, Tribunal Counsel; International arbitration lawyer; Counsel to Iran and China Tribunals.

Dr Aldo Zammit Borda, Tribunal Head of Research and Investigation. Reader in Law at City, University London.

Dr Nevenka Tromp Lecturer University of Amsterdam. Leadership Research Team at the ICTY from 2000 to 2012

<sup>6</sup> A late – last minute – proposal by the UN Human Rights Council (UNHRC) to present a report about the Uyghurs at roughly the time of this Judgment came unexpectedly. The Tribunal offered the UNHRC all assistance it could with its, the Tribunal's, extensive database.

in part, they *may* be shown to be doing bad things. No other starting point for an investigation could be just or 'fair'.<sup>7</sup>

17. It is essential to recognise that actions seen as wholly wrong and beyond justification by citizens of liberal democracies, might to citizens of China seem genuinely acceptable and justified for the public good. It is best to partition whatever may be *unquestionably* beyond justification and in breach of internationally recognised norms as set out in the Universal Declaration of Human Rights of 1948 and the laws on genocide, crimes against humanity and torture from what citizens in Xinjiang *may* find unobjectionable.<sup>8</sup>
18. It is also necessary to view some of the events of which the Tribunal has heard through a clear lens. Countries *are* entitled to seek to maintain their boundaries – that entitlement has recently been defended in Spain and the United Kingdom, by way of examples. Where separatist movements exist they often involve lethal or other violence where blame may be difficult to apportion. The response by states to terrorism or separatism may result in the suspension of previously accepted norms - for instance the British introduced detention without trial in the Northern Irish 'troubles'. Some citizens of some countries may well tolerate, or even prefer, authoritarian governments and have no particular desire for *liberal* democracy and

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<sup>7</sup> As explained in a fuller note on fairness at Annexe \_\_\_ below, the Tribunal has exercised caution before crediting the common law (UK/US etc) notion of 'fair trial' or of 'fairness' itself with universal application or even with ready understanding and acceptance outside countries with an Anglo- Saxon background. This caution is of particular importance when considering the government and people of a country culturally distant from Europe and from Anglo-Saxon based systems of law, however much that system may have dominated all international judicial procedures since the Nuremberg and Tokyo trials that followed World War II.

In so far as proper to pay regard to 'fairness' and 'fair trials' at all, the Tribunal has had in mind Article 10 of the 1948 Declaration of Human Rights – referring to the rights of *individuals* - which in English says 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'. 'Rights' arising in processes for determination of crimes applicable to individuals may be seen as helpful to consider for determination of allegations made against a state and its government.

<sup>8</sup> There *are* matters that are unquestionably beyond justification and in breach of internationally recognised norms, as made most clear by the 1948 Universal Declaration of Human Rights. And the Tribunal recognises that, if humanity is single across the globe, then universal human rights anywhere engage obligations not just of governments but of *citizens everywhere* who can only do their best to ensure rights are enjoyed by others if properly informed. Which is why, without any other public evidence-based process determining these issues, the Tribunal has done its work. Any notion that rights and duties concerning universal human rights are *only* to be mediated by governments and international bodies for and on behalf of individual citizens cannot survive a 'what-if' consideration of, say, genocide being committed in an immediate neighbouring country of a state whose government prefers to trade rather than to intervene. Would the citizens of the state have no personal duty towards the citizens of the neighbouring country? Even if only to boycott traded goods? Geographical proximity does not strengthen, and geographical distance does not dilute, the duty humans owe to humans anywhere; at most distance affects ability to act.

may tolerate as acceptable the use of physical force and violence in pursuit of state aims, that would seem anathema to citizens of liberal democracies. Notwithstanding these differences, the Tribunal has been determined to apply universal standards, including those set by Declaration and Conventions, to which most countries including the PRC are committed, effective from shortly after the end of WWII.

19. With these cautions in mind, evidence heard at the Tribunal's Hearings in June and September was largely accepted by the Tribunal and shows that in Xinjiang and at the hands of some *part* or *parts* of the PRC government and the CCP:

- a. Hundreds of thousands of Uyghurs - with some estimates well in excess of a million - have been detained by PRC authorities without any, or any remotely sufficient reason, and subjected to acts of unconscionable cruelty, depravity and inhumanity. Sometimes up to 50 have been detained in a cell of 22 square metres so that it was not possible for all to lie on concrete (or similar) floors, with buckets for toilets to be used in view of all in the cell, observed at every moment by CCTV.
- b. Many of those detained have been tortured for no reason, by such methods as: pulling off fingernails; beating with sticks; detaining in 'tiger chairs' where feet and hands were locked in position for hours or days without break; confined in containers up to the neck in cold water; and detained in cages so small that standing or lying was impossible.
- c. Many of those detained have been shackled by heavy metal weights at their feet and sometimes with feet and hands connected, immobilised for months on end.
- d. Detained women - and men - have been raped and subjected to extreme sexual violence. One young woman of twenty or twenty-one was gang raped by policemen in front of an audience of a hundred people all forced to watch.
- e. Women detainees have had their vaginas and rectums penetrated by electric shock rods and iron bars. Women were raped by men paying to be allowed into the detention centre for the purpose.

- f. Detainees were fed with food barely sufficient to sustain life and frequently insufficient to sustain health, food that could be withheld at whim to punish or humiliate.
  - g. Detainees were subjected to solitary confinement in cells permanently dark or permanently lit, deprived of sleep for days at a time and ritually humiliated.
20. All evidence in both written and oral form is available on the Tribunal's website. Full understanding of the treatment of the Uyghurs is only possible by reading, viewing and recalling the evidence in whole.
21. Any *single* witness statement would, in nearly all cases and if accepted as true, contain accounts of mental and physical cruelty and suffering as to cause sustained outrage in nations that count themselves as free.
22. There is also evidence of people dying as a result of their treatment in detention centres and some evidence of detainees, often comparatively young detainees, being removed from cells by force never to be seen or heard of again.
23. BUT there is no evidence of organised *mass* killings. Indeed, it is clear that detainees, are allowed back into society, sometimes after as short a period of detention as 3-6 months - often to be detained again - sometimes after long periods in detention and sometimes after sustained torture.
24. Marie van der Zyl, President of the Board of Deputies of British Jews wrote to Chinese Ambassador to the UK in July 2020; 'Nobody could watch the segment of the BBC's Andrew Marr show on which you appeared yesterday and fail to notice the similarities between what is alleged to be happening in the PRC today and what happened in Nazi Germany 75 years ago: People being forcibly loaded onto trains; beards of religious men being trimmed; women being sterilised; and the grim spectre of concentration camps.' Such images have led others to make comparisons with the Holocaust and it was, of course, the Holocaust that led to 'genocide' becoming a term of general use and then a defined crime. Such comparisons may be well-intentioned but are unhelpful. But the evidence of what has happened to the Uyghurs is *not* the Holocaust, not just because of the lack of

evidence of mass killings but also because of the return of those detained to society – never something intended for Jews taken to concentration or death camps.<sup>9</sup>

25. Genocide in law is more broadly defined than the common conception of mass murder of a specific group.<sup>10</sup> Genocide can be established in law by actions that result in the *killing of no one* although such a form of the crime has never, in over 70 years, been dealt with to conclusion on that basis alone by any court. It is hoped that the precise formulation of this broader definition has been in the mind of some of those enthusiastically using the term in respect of the Uyghurs.
26. The Tribunal has had all these matters in mind, together with a need to respect how the term genocide came into existence because of the suffering of the Jews, in its review of the law and the facts, especially in its consideration of the allegations of genocide.

#### **HOW THE TRIBUNAL HAS APPROACHED THE EVIDENCE<sup>11</sup>**

27. At Appendix\_\_\_\_, it is explained how victim witness evidence generally was accepted as reliable, although on occasion not every word was considered accurate, as might be expected given failings of memory that can follow trauma. The Tribunal takes the opportunity of recognising the courage required by many if not all of these witnesses in providing their evidence. Two witnesses were not relied on at all *not* because they were disbelieved but out of an abundance of

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<sup>9</sup>Another stark contrast with the Holocaust comes from Han Chinese men being encouraged to marry Uyghur women thereby to achieve assimilation, in part at least, of one ethnicity into another. Never in contemplation of anti-Semites in Nazi Germany or anywhere.

<sup>10</sup> See Google, Oxford Languages as an example of modern non-specialist understanding of genocide. The BBC on 11<sup>th</sup> March 2021 observed in 'How do you define Genocide': 'Genocide is understood by most to be the gravest crime against humanity. It is defined as a mass extermination of a particular group of people - exemplified by the efforts of the Nazis to eradicate the Jewish population in the 1940s'. These and similar definitions, while usually acknowledging the broader definitions in the UN Convention and some modern criminal statutes, probably reflect non-specialist contemporary usage of the term.

On 22<sup>nd</sup> January 2021 the Economist summed up the issue: 'the dictionary definition of "genocide" is simple. Just as "homicide" means killing a person and "patricide" means killing your father, so genocide means killing a people, such as an ethnic or religious group. The examples that spring most readily to mind are the Holocaust and, perhaps, the mass murder of Tutsis in Rwanda in 1994. As a result many people were perplexed when Donald Trump's Secretary of State, Mike Pompeo, on his last full day in office, used the word "genocide" to describe what China's government is doing to the Uyghurs, a mostly Muslim ethnic group, in Xinjiang, a western region of China. His successor, Anthony Blinken, agreed with him, but to many it sounded like the wrong word. Granted, China is treating the Uyghurs with horrific cruelty. It has locked up 1m or more of them in re-education camps, where they are beaten if they seem to revere Allah more than the president, Xi Jinping. But no one thinks China is carrying out mass slaughter in Xinjiang. The confusion arises because the UN's convention on genocide, which was drafted after the second world war, defines it exceptionally broadly, in ways that are quite different from the popular understanding of the term'.

<sup>11</sup> After the September hearings there were some informal fact checking discussions involving members of the Tribunal; nothing of any kind adverse to the PRC emerged.



caution, given that the PRC failed to respond to the many invitations to take part in the Tribunal's proceedings and that there were questions that *might* have been asked of these witnesses from PRC state material *not* available to the Tribunal.

28. This first-hand evidence was supplemented by expert evidence covering a wide range of topics.
29. Criticisms by the PRC of the Tribunal, its working and the evidence it received were assessed.
30. No adverse factual inference of any kind was drawn against the PRC or any other body for failure to respond positively to requests for evidence or assistance made by the Tribunal.
31. Opinions on final issues – whether crimes have been committed – have been read in reports and opinions, and heard in evidence, but no attention is paid to those opinions by the Tribunal.
32. The Tribunal had to consider, as a matter of critical importance, whether action and behaviour evidenced by a limited number of witnesses could be extrapolated as reflective of what has been happening to the Uyghurs in Xinjiang generally. A confluence of consistent evidence from unrelated/unconnected witnesses, documentary evidence, academic papers, media reports and public documents from the PRC provided a uniform picture of life in Xinjiang. It showed, for example, the scale and speed of construction of detention centres, the treatment of Uyghurs within those detention centres, the destruction of mosques and state surveillance of extreme intrusive capacity etc. The Tribunal found it possible – cautiously but confidently – to extrapolate from individual accounts to reach broader conclusions.

### **WITNESS EVIDENCE**

33. From evidence given in person to the Tribunal, where the core evidence of all bar one fact witness has been accepted, the following further non-exhaustive list of facts were found proved:
  - a. At 'classes' in detention centres - detainees were forced to learn and sing songs in praise of the CCP and the PRC in the presence of guards at risk of

being dragged from the class and tortured to the point of screaming within hearing of those still in the class.

- b. Detainees were forced to take medicines by mouth or by injection that affected reproductive functioning of women and possibly of men - or that had other undisclosed mind-affecting effects.
- c. Detainees were forced to provide blood samples and subjected to other medical testing for no disclosed reason.
- d. Pregnant women, in detention centres and outside, were forced to have abortions even at the very last stages of pregnancy. In the course of attempted abortions babies were sometimes born alive but then killed.
- e. By means of intense monitoring, surveillance, facial recognition and advanced technologies specifically targeted at Uyghurs and other ethnic minorities, parts of Xinjiang have become, to some of those ethnic minorities, an open -air prison.
- f. Neighbours members of families and other members of the community were incentivised or coerced in various ways to spy on each other.
- g. Actions of seeming insignificance may arbitrarily have resulted in detention sometimes leading to the destruction of families, livelihoods and the risk of extreme violence.
- h. Religious, cultural, political and business leaders have been imprisoned, 'disappeared' and, in some cases, known to have been killed or died.
- i. Children as young as a few months were separated from their families and placed in orphanages or state-run boarding schools. In some cases the parents of these children did not know if their children were alive or dead.
- j. A systematic programme of birth control measures had been established forcing women to endure removal against their will of wombs and to undergo effective sterilization by means of IUDs that were only removeable by surgical means.
- k. Uyghur women have been coerced into marrying Han men with refusal running them the risk of imprisonment for themselves or their families.

- l. 'Family friends', - mostly Han men - have been imposed on Uyghur households for weeks at a time to monitor and report on the households' thoughts and behaviours. Children have been questioned. The Han men sometimes slept in the same bed as the family, in some cases, when the Uyghur man was in a detention centre. Consequences included sexual harassment and non-consensual sex, along with interference with many cultural and religious habits and customs.
- m. A largescale enforced transfer of labour programme had been implemented both within the region but also into 'mainland' China. Often separated from their families, the transferees were forced to live in segregated dormitories.
- n. A large number of emblems of Muslim faith were removed from buildings with many mosques destroyed completely, desecrated or converted to other uses as cafes and tourist centres with burial grounds bulldozed and built over.
- o. Symbols or acts of religiosity have been suppressed and, when observed or detected, acts of faith were punished. Veils, beards, praying, studying of religious literature or any acts of adherence to the Muslim faith have resulted in long prison sentences.
- p. The use of the Uyghur language has been punished. Children from an early age have been denied education in their native language and have been punished for the use of it.
- q. Land, money and business assets have been arbitrarily appropriated by the State and in many cases given or sold to members of the majority Han population.
- r. Communities have been subject to destruction of swathes of houses often centuries old and the relocation of occupiers to places at significant distances from their erstwhile homes.
- s. The PRC has also sought control of Uyghurs living outside China by threats direct to them or to their family members in the PRC.

- t. Many members of the diaspora have had no information of their families, not even being enabled by PRC officials to know if their husbands, wives, parents or children were alive.
- u. The PRC has imprisoned, sometimes to long prison sentences, relatives of those who have spoken out publicly about circumstance of life in Xinjiang.
- v. The PRC has compelled countries where it can exert economic pressure to return Uyghurs to China to face fates unknown.

## **SANCTIONS**

34. On 26 March 2021 the PRC announced that various bodies and individuals, including this Tribunal and its Chair, would be subject to sanctions in these terms:

*The United Kingdom (UK) imposed unilateral sanctions on relevant Chinese individuals and entity, citing the so-called human rights issues in Xinjiang. This move, based on nothing but lies and disinformation, flagrantly breaches international law and basic norms governing international relations, grossly interferes in China's internal affairs, and severely undermines China-UK relations. The Chinese Foreign Ministry has summoned British Ambassador to China to lodge solemn representations, expressing firm opposition and strong condemnation. The Chinese side decides to sanction the following nine individuals and four entities on the UK side that maliciously spread lies and disinformation: Tom Tugendhat, Iain Duncan Smith, Neil O'Brien, David Alton, Tim Loughton, Nusrat Ghani, Helena Kennedy, Geoffrey Nice, Joanne Nicola Smith Finley, China Research Group, Conservative Party Human Rights Commission, Uyghur Tribunal, Essex Court Chambers. As of today, the individuals concerned and their immediate family members are prohibited from entering the mainland, Hong Kong and Macao of China, their property in China will be frozen, and Chinese citizens and institutions will be prohibited from doing business with them. China reserves the right to take further measures. China is firmly determined to safeguard its national sovereignty, security and development interests, and warns the UK side not go further down the wrong path. Otherwise, China will resolutely make further reactions.<sup>12</sup>*

35. These sanctions, only later supported by a law passed on 10 June 2021<sup>13</sup>, had some but very limited effect on evidence available to the Tribunal as will be explained below.

## **FACTUAL EVIDENCE FROM VARIOUS REPORTS**

36. A number of independent and reputable reports have been published, including:
- July 2020 **The Bar Human Rights Committee of England and Wales 'Responsibility of States under International Law to Uyghurs and other Turkic Muslims in Xinjiang, China'**(the Bar Human Rights Report);
- On 26 January 2021 **Alison Macdonald QC, Jackie McArthur Naomi Hart Lorraine of Essex Court Chambers**, a barristers' set of chambers in London, published an Opinion under the title: **International criminal responsibility for**

<sup>12</sup> [https://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/2535\\_665405/t1864](https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/t1864)

<sup>13</sup>The PRC Anti-Foreign Sanctions Law (AFSL) was promulgated on 10 June 2021

**crimes against humanity and genocide against the Uyghur population in the Xinjiang Uyghur Autonomous Region** (The Essex Court Chambers Opinion) **Yael Grauer's** 29 January 2021 report for **Intercept** (the Yael Grauer Intercept Report).

The March 2021 **Newlines Institute for Strategy and Policy** report entitled **'The Uyghur Genocide - An Examination of China's Breaches of the 1948 Genocide Convention** (the Newlines Report).

19 April 2021 **Human Rights Watch** (HRW) report **'Break Their Lineage Break Their Roots** (the HRW report).

June 2021 **Amnesty International** report **"Like we were Enemies in a War"** China's mass internment, torture and persecution of Muslims in Xinjiang (the Amnesty International Report).

19<sup>th</sup> October 2021 **Australian Strategic Policy Institute's International Cyber Policy Centre** **'The Architecture of Repression Unpacking Xinjiang's governance** by Vicky Xiuzhong Xu, James Leibold and Daria Impiombato (the ASPI Report).

November 2021 report by the **United States Holocaust Memorial Museum** titled **'To Make Us Slowly Disappeared'** (the Holocaust Memorial Museum report).

37. Some of those reports are, to an extent, syntheses of other work. Some contain primary evidence. Most or all cover the law, and not just the law with which the Tribunal is concerned but other routes to possible legal remedies or redress. The authors of all but one were invited to give evidence to the Tribunal and all except one declined. Professor Packer and Jonah Diamond, principal authors of the Newlines Report, came to London to give evidence in person and the Tribunal was and is very grateful to them in that regard.

38. Evidence relied on in these reports included some which overlapped with that provided to the Tribunal and some from different sources, the latter being dealt with at Appendix \_\_\_\_\_. There was not found to be any material contradictions between the differing sources of evidence.

39. The Yael Grauer Intercept Report, the HRW Report, the Amnesty Report and the ASPI Report added detail for the Tribunal to consider set out in detail at Appendix \_\_\_\_\_ including as a few examples:

Use of the 'anti-terrorism sword' at checkpoints into which people had to plug their phones that captured everything on their phones.; the #MeTooUyghur social media campaign that recorded complaints of disappearances - over 11,500 testimonies as of December 2020; one account of a detainee made to sit in a tiger chair, arms were cuffed and chained and legs were chained as well with his body tied to the back of the chair urinating and defecating in the chair

in which he stayed for three nights, dying after release; return to use of show trials, previously condemned by the PRC itself, one in the northern Xinjiang city of Ghulj in May 2014 of 7,000 mostly Uyghur alleged 'separatists' and 'terrorists' in a sports stadium, sentenced before a crowd of 7,000; significant return to use of campaign-style governance, including the anti-terrorist and the re-education campaigns; an account in leaked police papers demonstrated how mass incarceration included invasion of a detainee's family with members checked daily by the local neighbourhood committee for what they were doing and for their emotional response to the detention of their son/brother.

### **EXPERT EVIDENCE**

40. The Tribunal heard from a wide range of expert witnesses summarised at Appendix \_\_\_\_, covering many topics including:

History of plans for control in Xinjiang; political structure of Xinjiang; building and imprisoning of 100,000s of people in detention centres; detaining community and religious leaders; siting of factories within or beside detention centres; methods of surveillance; many consequences for Uyghur population numbers of control measures taken; detail of local control by local community police and visiting of so called 'family' members; mass sterilisation; separation of children and families by children being sent to boarding schools; transfer of labour by forceful encouragement and other pressure; destruction of mosques; restriction of religious practice.

### **EXPERT EVIDENCE FROM REPORTS NOT PRODUCED BY WITNESSES BUT AVAILABLE TO THE TRIBUNAL TO READ**

41. The same reports referred to in paragraph 32 above included broad commentary and often opinion on criminality, on the law generally and on the difficulties and impediments preventing the bringing of action or formal complaint to any court, international or domestic.
42. The Bar Human Rights Committee Report identified routes to remedy in the event that crimes including crimes against humanity and genocide were proved. It expressed no opinions of its own on culpability of the PRC. The author of the Report was unable to give evidence to the Tribunal
43. The Essex Court Opinion found there to be a credible case amounting to crimes against humanity and genocide. The authors led by Alison MacDonald QC declined to give evidence in support of this Opinion even *before* the imposition of

sanctions by the PRC on her and on her professional chambers<sup>14</sup> following which the Opinion was removed from the chambers' website.<sup>15</sup> The report failed to deal with several substantive matters in regard to the law on genocide.<sup>16</sup>

44. The HRW Report concluded that crimes against humanity were proved to have been committed but said of the allegations of genocide that HRW had 'not documented the existence of the necessary genocidal intent at this time'. Nonetheless it noted that 'nothing in the report precludes such a finding and, if such evidence were to emerge, the acts being committed against Turkic Muslims in Xinjiang—a group protected by the 1948 Genocide Convention—could also support a finding of genocide'. The HRW witness May Wang, giving evidence in respect of another issue, confirmed this HRW position was unchanged.
45. Amnesty International, like HRW, may be cautious in its reaction to allegations of this gravity about the PRC. Like most other reports the Amnesty International report suggested that crimes against humanity may have happened but expressed no view in the main text about genocide, referring only in a footnote to other reported opinions, the footnote concluding with an extract from the Economist magazine that said:

"'Genocide' is the wrong word for the horrors of Xinjiang: To confront evil, the first step is to describe it accurately,' ....

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<sup>14</sup> She explained: 'The legal Opinion which I and my colleagues drafted was not based on any independent factual investigations, but rather, as we set out in the Opinion, a range of publicly available evidence which we were not able to independently verify. Accordingly, the extent of the conclusions which we felt able to reach are set out in the Opinion itself, and we would not be able to add anything additional in testimony at the hearing. However, we would be pleased if you would make use of the written Opinion in any manner which would be of assistance to your investigation.'

<sup>15</sup> These sanctions affected the Tribunal, a 'sanctioned' entity, only in respect of availability of lawyers to advise the Tribunal - dealt with below - and with deterring a woman lawyer from joining the Tribunal's Counsel team. They had significant effect on the composition of Essex Court Chambers but drew no uniform condemnation from the legal profession of England and Wales, although The Inner Temple, The Prime Minister, The Lord Chancellor, The Justice Minister, the Bar Council of England and Wales, The Bar of Ireland, The Bar Council of Northern Ireland, The Law Society, The Faculty of Advocates of Scotland, The American Bar Association, LAWASIA, Ali Malek QC the Treasurer of Gray's Inn on his own behalf did speak or write in opposition to the sanctions. Many lawyers' organisations of different types with significant financial interest at risk did not. Notably, so far as known, the big and famous City of London law firms and other prestigious sets of barristers' chambers said nothing.

<sup>16</sup> The Tribunal expresses considerable surprise that individuals, collectives or other bodies willing to assert under the liberty of freedom of speech that a country, and even its president, may have committed genocide and crimes against humanity would not take the opportunity of advancing those assertions in a proper public setting when invited. The Tribunal has relied on all matters in the Essex Street Chambers Report that need to be considered if in any way *favourable* to the PRC or CCP but takes no notice of the opinions expressed on culpability for genocide, crimes against humanity or torture.

46. It is reasonable to assume that the Amnesty International report's authors, who felt unable to participate in the Tribunal's work directly, were not willing to describe what their report found as genocide.
47. The Newlines Report's very clear objective, as explained in evidence by Professor Packer and Jonah Diamond, is to establish that *state* attribution for genocide may require a lower standard of proof than that required for individuals. It also argued that intent for a state can be proved without making findings about any individual's intention.
48. Such intent, it argues, could be established from a collection of objective facts that are attributable to the state, including official statements, a general plan, state policy, a pattern of conduct, and repeated destructive acts, which have a logical sequence and result, or may result, in the whole or part destruction of the relevant group. The report found genocide against the Uyghurs established by each and every act prohibited in Article II of the Convention, explaining in the main body of the report that 'The intent to destroy the Uyghurs as a group is derived from objective proof, consisting of comprehensive state policy and practice'.... 'which President Xi Jinping, the highest authority in China, set in motion'.
49. Explaining – accurately – that State responsibility for breaches of the Genocide Convention is *not* a matter of *criminal* liability and that States may *not* be prosecuted or found criminally culpable for genocide it argues that the heightened criminal law standard of proof does not apply. Rejecting the need for proof beyond reasonable doubt it had applied a 'clear and convincing' standard of proof as sufficient for findings of breach of the Genocide Convention by a state.
50. Professor Packer and Mr Diamond framed several important questions for the Tribunal to consider. However the Tribunal is not the appropriate body to attempt to broaden the law on genocide or to run any risk of dealing with genocide other than by the strictest standard of proof, that of the 'beyond reasonable doubt' test. A people's tribunal that does not apply established and readily understood law to facts proved according to the strictest test may well reduce its public value which comes from providing unassailable findings of fact and law for others to use.

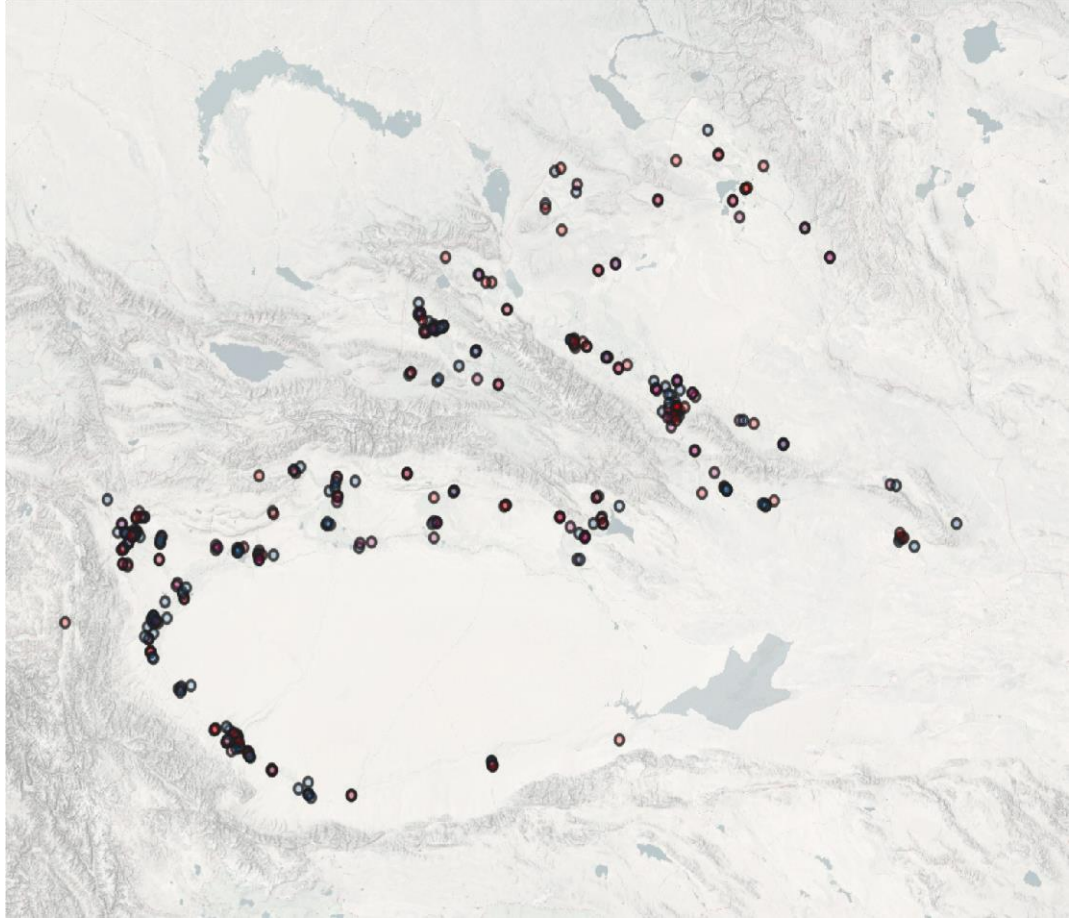


51. Professor Packer and Mr Diamond may have given encouragement to those who thought the Tribunal would only succeed if it found genocide – a wholly inaccurate understanding of the Tribunal’s function. They did, however, demonstrate how those who wish to make pronouncements about criminal culpability of nation states should have the courage to give evidence in public to support their opinions. The Tribunal repeats its gratitude to Professor Packer and Mr Diamond who demonstrated how the freedom of speech citizens of some countries enjoy, is a privilege.
52. Thousands of police files including a database used by the Ürümqi City Public Security Bureau and the wider Xinjiang Public Security Bureau were hacked in 2019, and leaked to journalist Yael Grauer, whose 29 January 2021 report for Intercept is referred to at paragraph 39 above.<sup>17</sup>
53. The same data, shared by her with ASPI led to their subsequent ‘ASPI report’ which expresses no opinion in regard to criminality but importantly pointed to the 2014 Counterterrorism and the 2017 Re-education campaigns and how the CCP’s ‘war against the Uyghurs’ intensified over that period. The report contained much helpful material but was published too late for the authors to be asked to give formal evidence or for its content to be discussed with other witnesses.
54. The report (see also Appendix \_\_\_\_ ) concludes among other things how:
- a. The 2017 Re-education Campaign, was a continuation of the 2014 Counterterrorism Campaign to stabilise the situation, consolidate, normalise and to achieve ‘comprehensive stability’ by the end of 2021. The 2017 campaign was expanded to include mass coerced labour assignments, mandatory birth-control measures and more intense indoctrination.’ The cycle of mass trauma and abuse in the campaigns in Xinjiang bear Xi’s imprimatur, his saying in at least three separate speeches between 2014 to 2020 that ‘the party’s Xinjiang governance methods and strategies are completely correct’ and that ‘[we] must adhere to them in the long term’.
  - b. The Fanghuiju program had officials and sometimes civilians visiting or occupying the homes of Uyghurs and other indigenous families, indoctrinating and surveilling families as fictional family members of the very men and women they might consign to the detention camps. The ‘Trinity’ mechanism ensures that every neighbourhood and village is co-managed by neighbourhood or village committee officials, police officers and external Fanghuiju work teams. During Xi Jinping’s 2014 inspection tour of Xinjiang, he reportedly gave high praise to the mechanism. The Neighbourhood Committee’s functions now include issuing travel permits for Uyghur residents, monitoring residents’ actions and emotions in their homes, committing individuals to re-education camps and subjecting relatives of those detained to ‘management and control’ orders that are akin to house arrest.

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<sup>17</sup> Unfortunately Yael Grauer was not invited to give evidence but the Tribunal has had the advantage of her written report.

- c. The Political and Legal Affairs Commission (PLAC) oversees the police, the procuratorate, the court, the justice department and other security organs all ultimately answerable to the CCP via the PLAC. Xi Jinping has dubbed the political and legal affairs system the party's 'knife handle' and insisted that the handle be firmly in the hands of the party and the masses.
- d. During Xinjiang's campaigns, law enforcement decisions are hasty, harsh and arbitrary<sup>18</sup> with senior officials promulgating new laws and regulations that contradict existing ones to meet the expedient needs of the campaigns. On the ground, local officers openly boast about acting outside legal process – with the endorsement of senior leaders and state media.
- e. Nathan Ruser, a witness at the Tribunal, produced this map produced in the ASPI report, showing Xinjiang detention facilities as at 24 September 2020:



- f. Dissemination of policy – 'propaganda' to some – was a prominent feature of the campaigns<sup>19</sup> and in December 2017, the Xinjiang Party Committee launched a second round of 'Becoming Family', now effectively merged with the Fanghuiju program and

<sup>18</sup> In 2019, a Xinjiang official told Human Rights Watch, as reported by ASPI, that at one stage during the Re-education Campaign: 'There were quotas for arrests in all the locales, and so we began to arrest people randomly: people who argue in the neighbourhood, people who street fight, drunkards, people who are lazy; we would arrest them and accuse them of being extremists. There was not enough room for them all in the centres, so they built new ones.'

<sup>19</sup> During the Re-education Campaign, the Justice Department played a leading role in mobilising and organising propaganda lecture groups, primarily through its 'Propaganda Lecture Office to Promote Harmony and Prevent Crimes'. In April 2017, the Xinjiang United Front Work Department held a series of 'three loves, three oppositions' seminars in Ürümqi that lasted more than 10 days, with nearly a thousand representatives from all sectors of Xinjiang society in attendance. 'Three loves, three oppositions' is a slogan shortened from a President Xi quote: 'Love the Communist Party of China, love the motherland, love the big family of the Chinese nation-race; oppose separatism, oppose extremism, oppose violence.'

answerable to Xinjiang Party Secretary Chen Quanguo, (see below), sending more than 1.12 million cadres and civilians into indigenous households for a five-day stay every two months.

- g. Of interest, many senior Chinese officials who experienced personal trauma during the Cultural Revolution helped orchestrate the Xinjiang crackdown with revolutionary zeal. Two of the most notable cases are Zhu Hailun and President Xi Jinping. Both men were subjected to re-education as teenagers (Zhu in Xinjiang and President Xi in rural Shaanxi), and subsequently claimed their experience of hard labour was transformative.

55. The Report comments that after becoming 'redder than red' to survive his family's ordeal during the Cultural Revolution, President Xi turned to Mao's playbook in mobilising the vast resources of the Chinese bureaucratic system to manufacture stability and conformity across the nation. The Uyghurs and other indigenous communities have borne the brunt of those efforts, and the two campaigns discussed in this report have led to increased interethnic distrust and resentment between Han and indigenous communities in Xinjiang.

56. A November 2021 report by the United States Holocaust Memorial Museum titled 'To Make Us Slowly Disappear' relied, in part, on evidence presented to this Tribunal. As with the ASPI Report it contains helpful material but was published too late for its authors to be invited to give evidence to the Tribunal

57. This report (see Appendix\_\_\_) explains how:

- a. As early as in the late 1980s Uyghurs voiced discontent about the state's preferential treatment of the Han Chinese community, the majority ethnicity in China. The preferential treatment given to the Han Chinese led to socioeconomic inequalities between the communities, resulting, in 1990, in rebellion in the town of Baren in Xinjiang's Kashgar prefecture against restrictions on the practice of Islam imposed by the Chinese government. The state responded with force, killing an estimated 1,600 Uyghurs.
- b. In 1997, in Ghulja county in Ili prefecture, northern Xinjiang, a similar protest was met with a violent crackdown by authorities, including arbitrary arrest, torture, and summary executions of Uyghur demonstrators. Since at least the 1960s, tens of thousands of Uyghurs have sought refuge from what they saw as repression, fleeing China.
- c. In 1998, a small group of Uyghurs, numbering in the hundreds, came together in Taliban-controlled Afghanistan, with the intent of launching a religiously inspired insurgency against Chinese rule. The group was referred to by the Chinese government as the ETIM but does not appear to have used that name itself. It reportedly had a strained relationship with both Al Qaeda and the Taliban, the latter maintaining a diplomatic relationship with the PRC during the time that it governed Afghanistan. By December 2001, most of the Uyghurs associated with the group had fled Afghanistan or been killed, resulting in the group's effective dismantling.
- d. Despite there being few violent events in Xinjiang between 1997 and 2008, the Chinese government increasingly profiled the Uyghurs as terrorists or potential terrorists and marginalized them,
- e. In the 2009 incident nearly 200 people were reportedly killed and hundreds injured, with the vast majority of the officially recorded casualties being identified by authorities as Han Chinese. Uyghur organizations claimed a massive undercounting of Uyghur casualties. Deepening restrictions on the entire Uyghur community in Xinjiang followed with roadblocks and checkpoints. Uyghurs who lived in Xinjiang's main towns were required

to return to their towns and villages of origin to receive passbooks, called ‘people’s convenience cards,’ which severely restricted their freedom of movement. By 2016, Uyghurs with passbooks could no longer leave their hometowns with the authorities demanding that residents install surveillance software on their phones and that drivers install a Chinese-made satellite navigation system in their vehicles. In 2016, voice pattern collection systems were purchased by the police bureaus in Xinjiang, following the ‘Notice to Fully Carry Out the Construction of Three-Dimensional Portraits, Voice Pattern, and DNA Fingerprint Biometrics Collection System.’

- f. In a white paper published in July 2019 by China’s State Council Information Office, the government denied the Uyghurs’ Turkic ancestry, stating that ‘Islam is neither an indigenous nor sole belief system of the Uyghurs’ but was imposed by the expansion of the Arab Empire, and that ‘theocracy’ and ‘religious supremacism’ were a betrayal that needed to be opposed.

58. The report felt able to build on its own March 2020 announcement that there was a reasonable basis to believe that the CCP had perpetrated the crimes against humanity of persecution and of imprisonment or other severe deprivation of physical liberty against Uyghurs. Its present report analyses additional information available in English in the public domain concerning the treatment of China’s Uyghur community in Xinjiang, and finds there is now a reasonable basis to believe that the crimes against humanity of forced sterilization, sexual violence, enslavement, torture, and forcible transfer are also being committed. The limited nature of verifiable information presents clear challenges to the legal analysis of the presence of genocidal intent, says the report. This is by design, with the Chinese government continuing to impede the flow of information concerning its crimes against the Uyghurs of Xinjiang. The information which has made its way into the public domain gives rise to serious concerns that the Chinese government may be committing genocide against the Uyghurs, concludes the report.

59. The fact that it was the Holocaust Memorial Museum Report that reached these conclusions relieves the Tribunal of some of the concerns that it felt (see paragraph 26 above and xyz below) about genocide being applied in circumstances so clearly *not* like the Holocaust.

60. The work of expert witness Ethan Gutmann, an investigative journalist, needs particular mention because his evidence (Appendix\_\_\_\_) will *not* be relied on because although the Tribunal has no reason *not* to accept his research it is, as he acknowledges work in progress. He invites consideration as *possible* that young detainees in their mid-to late-twenties were medically examined, found as fit, and having been marked fit on record cards were used for forced organ harvesting –

that is, being killed for their organs to be extracted and sold. Evidence supporting this as *possible* includes not just a pattern of disappearance of young detainees but evidence of continuation of organ transplantation as a major, extremely lucrative business in the PRC as a whole. Mr Gutmann identified at least one site where a hospital detention centre and crematorium are co-located, a short drive from an airport that has a special express lane in ‘Departures’ for the transportation of organs. Mr Gutmann does not claim that his theoretical possibility is sufficiently confirmed by incontrovertible evidence. He is no doubt, continuing in his work. If such a practice is going on, killing Uyghurs and others for commercial purposes would have different objectives and intentions from those being considered by this Tribunal and it is left to others to prove or disprove his theory.<sup>20</sup> Ethan Gutmann gave evidence at both the June and September hearings and the Tribunal is appreciative of his clear devotion to the problem and of the evidence he gave.

#### **MATERIAL FROM LEAKED DOCUMENTS AND EVIDENCE IN PUBLIC DOMAIN ABOUT PRC POLICY AND PRACTICE**

61. There have been several leaks of what are said to be genuine PRC documents which must necessarily be treated with the greatest of caution. In all cases leaked documents coming to the Tribunal have been put into evidence by experts who have themselves tested the documents for authenticity and in some cases authenticity has been verified by newspapers, other media and academics. No leaked document, so far as known to the Tribunal, has been challenged as to authenticity or reliability by the PRC.

62. It is worth observing that leaking of material is evidence that there *are* those within China who may disagree with government policy.

63. Amnesty’s summary about leaked documents can be relied on:

‘Since November 2019, journalists, scholars, and human rights groups published half a dozen caches of leaked Chinese government documents related to the situation in Xinjiang. Together, they form the most comprehensive source of documentary evidence about the government’s actions and intentions with respect to the system of persecution and mass internment in Xinjiang.

In November 2019, The New York Times reported that it had obtained more than 400 pages of internal Chinese government documents. According to the Times, the documents,

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<sup>20</sup> The Transplantation Society (TTS) and World Health Organisation (WHO) were considered by the China Tribunal in its Judgment at paragraphs 410-413 and it is not certain that either has sufficient capacity to do this.

known as the “Xinjiang Papers”, “confirm the coercive nature of the crackdown in the words and orders of the very officials who conceived and orchestrated it.” The documents included information about senior government officials ordering mass detentions, including speeches by President Xi Jinping in which he calls for an all-out “struggle against terrorism, infiltration, and separatism” using the “organs of dictatorship” and showing “absolutely no mercy”. The documents also reveal that government officials who were insufficiently supportive of the campaign were purged, and that the internment camp system expanded greatly after the appointment of Xinjiang Party Secretary Chen Quanguo, who has been quoted as saying “round up everyone who should be rounded up.”

In November 2019, the International Consortium of Investigative Journalists released another cache of government documents. Known as the “China Cables”, these documents included what has been described as a “operations manual” for running the internment camps in Xinjiang. This manual – known as the “Telegram” – includes instructions for camp officials about “how to maintain total secrecy about the camps’ existence”, “methods of forced indoctrination”, and the points system used to evaluate detainees. The cache also includes four intelligence briefings – known as “bulletins” – that reveal information about the government’s mass data gathering and surveillance programme, including the IJOP, and how information from the IJOP [Integrated Joint Operations Platform<sup>21</sup>] gathered was used to “select entire categories of Xinjiang residents for detention.”

Two other leaked government documents contain government records on several thousand people in total who were arrested and sent to internment camps in Xinjiang between 2017 and 2019. The documents – referred to as the “Karakax list” and the “Aksu list”, after the locations in Xinjiang where the people named in the documents lived – contain, among other things, the official reasons given for why individuals were detained and interned.

64. The most recent cache of leaked documents, the Xinjiang papers, came directly to the Tribunal - from a source that cannot be identified - during the September evidence hearings. Following a preliminary assessment it was determined that an academic with pre-existing knowledge of the matters to be dealt with should be engaged to analyse the documentation. Various possibilities were considered. Given the need to have an evidence hearing ahead of 9<sup>th</sup> December, Dr Adrian Zenz was approached. Under conditions of strict security, arrangements were made for the material to be passed, first, to him and thereafter to two peer reviewers, Professor James Millward and Dr David Tobin. The cache closely matched documents that were leaked to the New York Times (NYT) in 2019 but the NYT have stated that the provider of the documents to the Tribunal was not the NYT itself. Zenz, Millward and Tobin reported on the documents in a live-streamed third hearing of evidence on the 27<sup>th</sup> November 2021.

## **MATERIAL NOT PROVIDED DESPITE REQUESTS**

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<sup>21</sup> An application platform that detects irregularities or deviations, as perceived and coming from multiple sources of information, in order to regulate, control and even send to detention Xinjiang Uyghurs. Examples of irregularities as limited as not socialising with neighbours, often avoiding using the front.

65. The Tribunal has no power to enforce provision of documents or attendance of witnesses. Nevertheless it has sought material from sources where it is known or believed evidence exists that would assist the Tribunal in its work.
66. Specific requests for information have been made to the US, UK and Japanese governments, and to the PRC itself, none of which have been met. The Tribunal will draw no inferences of any kind, adverse or favourable to the PRC or to any other party in this regard. It reaches its conclusions on the evidence it *does* have, nothing else.
67. It is appropriate to set out what has been sought to complete the Tribunal's public record.
- a. Request to Secretary of State Blinken, who adopted outgoing Secretary of State Pompeo's assertions of genocide by the PRC, for evidence and reasoning in support of the assertion. Request never formally acknowledged and informally denied.
  - b. Japan, reported on December 29th, 2020 by Kyodo News to have provided evidence of China's forceful detaining of Muslim Uyghurs to the USA possibly leading to the United States stepping up criticism of the PRC, including by the Vice-President in July 2019 claiming that the 'Communist Party imprisoned more than a million Chinese Muslims, including Uyghurs, in internment camps where they endured around-the-clock brainwashing'. Request for material was not acknowledged.
  - c. The UK Government has been in contact with the Tribunal from time to time. The Government has assisted the Tribunal at the Tribunal's request with securing visas for some witnesses coming from overseas to give evidence at both the June and September hearings of evidence in London. However, requests for assistance by provision of useable evidence, including by freedom of information requests, have all been declined.
  - d. The New York Times was known, before the cache of papers was delivered direct to the Tribunal in September 2021, to have a set of Xinjiang papers of which it had only published a part. The Tribunal made several requests for access to the balance of papers which were declined.
68. Correspondence between the Tribunal and the PRC, US Secretary of State, the Embassy of Japan in London, the New York Times and the UK Government, including the freedom of information requests, are all produced at Appendix\_\_.
69. There *are* matters and information that governments may justifiably keep from their own people and therefore from a people's tribunal. However, where there is real and pressing public interest in the truth of allegations as serious as those being dealt with by the Tribunal, it is unfortunate that the Tribunal has not been assisted in the seeking of that truth. Documents available to governments that are not themselves producing material that they *may* have relied on confidentially (the US) or could have relied on themselves had they performed public fact-finding exercises, should – in principle – be disclosed to the public.

70. Several parliaments around the world have voted, in different terms, to assert that genocide has been happening in Xinjiang following debates that demonstrated a high level of public concern for the Uyghurs.<sup>22</sup> The Tribunal has not sought access to briefing papers provided in those parliaments or necessarily been able to listen to the debates.
71. It has not been clear on what legal basis these assertions have been made, and it may be thought that they have been advanced by some parties with a collateral political objective.

### **FACTUAL CONCLUSIONS**

72. The Tribunal's decision-making has been methodical: considering written and oral witness statements and evidence, reaching factual conclusions based on evidence considered reliable and finally applying the law to those findings.
73. Different standards of proof have been applied in varying judicial settings but the Tribunal will apply the most conservative of these, with the highest bar of 'proof beyond reasonable doubt'. Applying this test will best eliminate uncertainty for all and avoid risk of any *possible* unfairness falling on the PRC. For fuller reasoning on use of this standard see Appendix\_\_\_\_.
74. It is important to recognise the methodical planning necessary for a state to embark on a policy such as the PRC has in Xinjiang. Every detention will have been planned by someone. Every decision to keep in detention, and the decisions when and on what terms to release, will have been made and recorded, probably in

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<sup>22</sup> The **Canadian House of Commons** approved a motion to **recognise China as committing genocide** against Muslim minorities on 22 February 2021 referencing detention camps and measures intended to prevent births pertaining to Uyghurs and other Turkic Muslims".

On 25 February 2021, the **Netherlands Parliament** passed a **non-binding resolution** designating China's actions against the Uyghurs a genocide. 'China is engaged in acts covered by United Nations Resolution 260, including holding penal camps and implementing measures designed to prevent births within a specific group'.

On 22 April 2021, the **UK House of Commons** passed a **non-binding motion** declaring human rights abuses in Xinjiang as a genocide. 'Uyghurs and other ethnic and religious minorities in the Xinjiang Uyghur Autonomous Region are suffering Crimes Against Humanity and Genocide'

In May 2021, the **Lithuanian Parliament** voted a resolution to recognise that Chinese **abuses against the Uyghurs constitute genocide**, based - inter alia - on the UN Charter and Universal Declaration of Human Rights of 1948, the Convention against Torture, the ICCPR, and the Convention on the Prevention and Punishment of the Crime of Genocide.

The **Senate of the Czech Republic** unanimously passed a motion in June 2021 to condemn the treatment of Uyghurs as **both genocide and crimes against humanity**. 'here are massive violations of human rights and freedoms, genocide and crimes against humanity, ethnic discrimination, and the suppression of cultural, religious and political identity in the PRC, in particular in the Autonomous Regions of Tibet and Xinjiang.'

In **Belgium**, the **Parliament's foreign relations committee** passed a motion in June 2021 to condemn China's treatment of Uyghurs as crimes against humanity and stated there was a '**serious risk of genocide**' in Xinjiang.



writing.<sup>23</sup> Policies - even if not each act that happened - to those detained will have been planned, probably in writing. New detention buildings constructed with 'dark rooms' free of CCTV used for torture, cells with limited or no regular lavatory facilities will have been planned in writing, on architects' and engineers' drawings. Decisions to interrogate or torture individuals for whatever perceived breach of some rule will have been made within a chain of command and probably recorded in writing. Orders were placed for torture equipment - electric shock sticks, tiger chairs and whips. Evidence of a detainee being obliged to go to a bucket for a lavatory in full view of all in the cell is evidence of someone watching by CCTV a man or woman using a bucket for a lavatory in full view of embarrassed and humiliated others. Evidence of a man having to kneel at the opening of the door through which food would only be passed if he sang a song is evidence of someone having planned and of watching it happen. Evidence of someone being beaten or abused in his cell by other 'cooperating' cell mates or guards was planned and authorised by someone. Someone being taken from a cell for torture out of sight of cameras was ordered or approved and planned to terrorise the man or woman being tortured into believing he or she really had no hope. The comprehensive, invasive surveillance systems that penetrated every aspect of life, along with the birth control and abortion measures are evidence of those things being planned, manned, seen through.

75. This evidence - of gross human rights breaches at a minimum - reveals not just the suffering of victims but that thousands of individuals who planned the systems in operation, were trained - and trained others - to do all that was necessary to bring the systems into force. Professionals - architects, engineers, medics, etc - were content for their skills to be used for such systems, all being readied by the PRC to disregard the rights of fellow citizens.

76. Were those individuals careless of the rights of others from the start? May some of them - not the rapists or torturers of course - genuinely believe that what they were doing was for the good of the PRC overall? Did the PRC, by whatever

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<sup>23</sup> The leak of documents considered in Architecture of Repression Report, includes some written records of visits to families of detainees.

stratagem create an enormous force of individuals for whom the rights of others meant nothing measured against the demands of the state, or perhaps were not seen as wrong?

77. The role and responsibility of those individuals, along with their, and others' perceptions of how right or wrong they were to do, or allow to be done, whatever happened, is bound to be complicated. Their responsibility is not for this Tribunal to consider.<sup>24</sup> However the *fact* of their being, or being made to be, willing - in thousands - to do what was done is relevant in itself *and* for what it may show of the overall intention of the PRC. Creating a workforce of this kind - or using an already existing and willing workforce - is clearly reflective of a need and intent to get certain things done.

78. With all these background facts in mind the Tribunal has been able to analyse the evidence it has received by topic, summarised as follows;

#### **Was there a Plan?**

79. Intermittent and fluctuating tension between the indigenous people in the region including the Uyghurs and Han-centric China intensified in 2014 following the spilling out of violence into 'mainland' China.) The CCP launched the 'War on Terror' the purpose of which was to eradicate the perceived security threat posed by its Muslim minority population but also to transform the region into a more integrated part of China for, amongst other purposes, economic benefit.

80. President Xi Jinping had come to power in 2013 and visited the XUAR in 2014 during which he demanded an all-out 'struggle against terrorism, infiltration and separatism'... 'that would show absolutely no mercy'. Xi Jinping's responsibility for what followed is covered in part by the Xinjiang papers passed to the Tribunal and the subject of evidence on the 27<sup>th</sup> November.

81. In 2016 Chen Quanguo was appointed XUAR Party Secretary. As Party Secretary in the Tibet Autonomous Region from 2011 he had achieved control by extreme surveillance, detention and other measures.

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<sup>24</sup> All literature shows that, even were the PRC to change substantially at some stage so as to review its own and its citizens' historical wrongs, protective walls of guilt, shame, avoidance, denial would make any fair assessment of citizen responsibility extremely hard or impossible to set out with clarity. .

82. In 2017 the 'XUAR De-Extremification Regulation' was introduced as regional policy which legalised the 're-education internment' strategy.
83. President Xi returned to the region in 2017 and on March 31<sup>st</sup> 2017 the General Office of the Standing Committee of the region's People's Congress said; 'It was emphasised that the Regulation constitutes the implementation of the Central Government's policy decisions and deployments, especially to implement the important instructions and requirements of General Secretary Xi Jinping'.
84. In July 2019 XUAR Governor Shorati Zakir said 'Comrade Xi Jinping at the core has attached great importance to Xinjiang work...and has devoted a lot of effort to Xinjiang work'.
85. These policies intensified into 2018 with a speech to 'break their lineage, break their roots, break their connections'. The manifestation of these policies continued to evolve into multiple but seemingly interlinked plans at every level of regional, local and community government over successive years. It encompassed every facet of life for Uyghurs. There were policies and plans for birth control, sterilisation, forcible labour transfer, placement of children into state boarding schools and orphanages, imposition of Han into Uyghur homes, destruction of mosques and mass internment.
86. The regulations and plans were often target-based with incentives and penalties for those officials who respectively succeeded and failed.
87. A surveillance system had been developed monitoring every minute detail of Uyghur life deployed so comprehensively and with such sophistication that it has rendered the region a virtual outdoor prison.
88. *Before* receipt of the leaked Xinjiang papers in September 2021 the Tribunal concluded that the policies required construction of hundreds of buildings, deployment of thousands, or more likely hundreds of thousands, of personnel at very substantial cost. The Tribunal concludes that this vast apparatus of state repression could not exist if a plan was not authorised at the highest levels and that it was ordered to be implemented by every layer of government. The Tribunal is satisfied that a comprehensive plan for the enactment of multiple but interlinked policies targeting the Uyghurs had been formulated by the PRC. This conclusion

was reinforced *later* by analysis of the Xinjiang papers by Dr Zenz, Professor Milward and Dr Tobin.

**The leadership and central government responsibility.**

89. Extracts above from Dr David Tobin's statement make clear the centralised power structures that exist within the body politic of the PRC:

- a. The political system of the PRC is a centralised party-state, with no meaningful separation of the state from ruling party, the CCP. Strategic decision-making is made by the party while the state manages the daily affairs of government in accordance with party policy.
- b. Since Xi Jinping's rise to power, decision-making has been increasingly centralised, most notably with the end to Presidential term limits, Xi's rapid accession to the Central Military Commission (CMC), and the inscription of 'Xi Jinping thought' in official state ideology as one of the "guides to action' in the CCP constitution
- c. Xi has centralised power and consistently explained ethnic policy is a national security matter pertaining to China's Great Revival and national sovereignty that he has been able to implement 'fusion' policy without significant opposition.
- d. Direct connections between ethnic policy and national security was restated in recent high-level ethnic affairs meetings, announcing that central directives must be obeyed and that all ethnic policy work must be conducted 'from the perspective of national rejuvenation' to maintain China's sovereignty and security.

90. The Tribunal was presented with an organogram (Appendix \_\_\_\_ ) that set out the hierarchy and interconnectedness of different state and CCP agencies from which it could be seen that all power flowed from the most senior echelons of government.<sup>25</sup> Professor James Millward drew attention to the specific centralisation of ethnic and religious policy;

'When Xi Jinping came to power in 2013, he embarked on a radical revision of the PRC diversity system. He transferred the State Ethnic Affairs Commission and the State Administration for Religious Affairs, formerly under the State Council, to reside instead under the United Front Work Department of the Communist Party. In other words, he moved the bureaucracies dealing with ethnicity and religion out of the government, and under more direct Party control'.

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<sup>25</sup> The Tribunal commissioned Dr Nevenka Tromp and two Tribunal researchers to prepare the organogram of state, government and party of the PRC from public state documents in order to identify post holders and the multiplicity of positions held by post holders. The organogram was checked and confirmed for accuracy by other witnesses.

91. The leaking to the Tribunal of the Xinjiang papers and their subsequent analysis by Dr Zenz reinforces the understanding *previously* evidenced by Millward, Tobin and others that the PRC's policy - of such importance to the perceived national security threat - was initiated and directed by the Party Secretary of the CCP, President Xi, and, given his control over the apparatus of state power, by the most senior officials including members of the Standing Committee of the Politburo.
92. Documents from 2104 show that President Xi authorised the local Xinjiang government to draft what became the 'De- Extremification Regulation', which is intimately linked to the re-education campaign and the internment camps that came with it.
93. The speeches made in 2014 by President Xi together with other top officials including Li Keqiang and Yu Zhengsheng were mandated to be studied by party and state cadres as they contained the 'strategic deployment of the Party Central Committee for Xinjiang work' and were aimed to 'convey and learn the spirit of General Secretary Xi Jinping's series of important speeches'.
94. A second series of speeches from 2017 and 2018 directly implicate Xinjiang's Party Secretary and Politburo member Chen Quanguo and his deputy Zhu Hailun in an intensification of President Xi's 2014 policy including the 'rounding up all who should be rounded up' instructions.
95. These documents of the highest and second highest classification directly link President Xi Jinping to the policies and actions that have been implemented in Xinjiang.
96. The Tribunal is satisfied that President Xi Jinping, Chen Quanguo and other very senior officials in the PRC and CCP bear primary responsibility for acts that have occurred in Xinjiang. The Tribunal recognises that the perpetration of individual criminal acts that may have occurred, whether rape or torture, will not have been carried out with the detailed knowledge of President Xi and others but the Tribunal is satisfied that they have occurred as a direct result of policies, language and speeches promoted by President Xi and others and furthermore these policies could not have happened in a country with such rigid hierarchies as the PRC without implicit and explicit authority from the very top.

**97. Torture.**

98. The Tribunal is satisfied as set out previously that within the PRC's penal system barbaric, cruel and sadistic torture was perpetrated. See Appendix \_\_\_\_.

**99. Rape and sexual violence**

100. The Tribunal is satisfied as set out previously that rape and other sexual violence within the penal system was widespread. See Appendix \_\_\_\_.

**101. Religious and cultural destruction.**

102. Satellite imagery identified the destruction of, or damage to, approximately 16,000 mosques or 65% of the previous total in the region, evidence matched by direct observations of witnesses. In addition cemeteries and other sites of religious significance have been destroyed. Uyghurs are punished by imprisonment and torture for displays of religious adherence including attending mosque, praying, wearing of headscarves and beards and not drinking alcohol or not eating pork.

103. The Tribunal is satisfied that the PRC has implemented a comprehensive policy of destruction of physical religious sites, conducted a systematic attack on Uyghur religiosity for the stated purpose of eradicating religious 'extremism'. See Appendix \_\_\_\_.

**104. People imprisoned and disappeared.**

105. Most witnesses gave evidence that members, sometimes many, of their families had been imprisoned. Often they had no knowledge of the whereabouts of their relatives. One man told how fourteen of his nieces and nephews had disappeared. He did not know where they were or whether they were even alive. The Tribunal was only able to hear from a limited number of such witnesses in person but received evidence of thousands of people reporting the incarceration of thousands of relatives or friends.

106. The Tribunal is satisfied that the PRC has built a very extensive network of detention and penal institutions, that it has imprisoned hundreds of thousands and maybe a million and more of Uyghurs without substantive cause and without any recognisable or legitimate legal process. See Appendix \_\_\_\_.

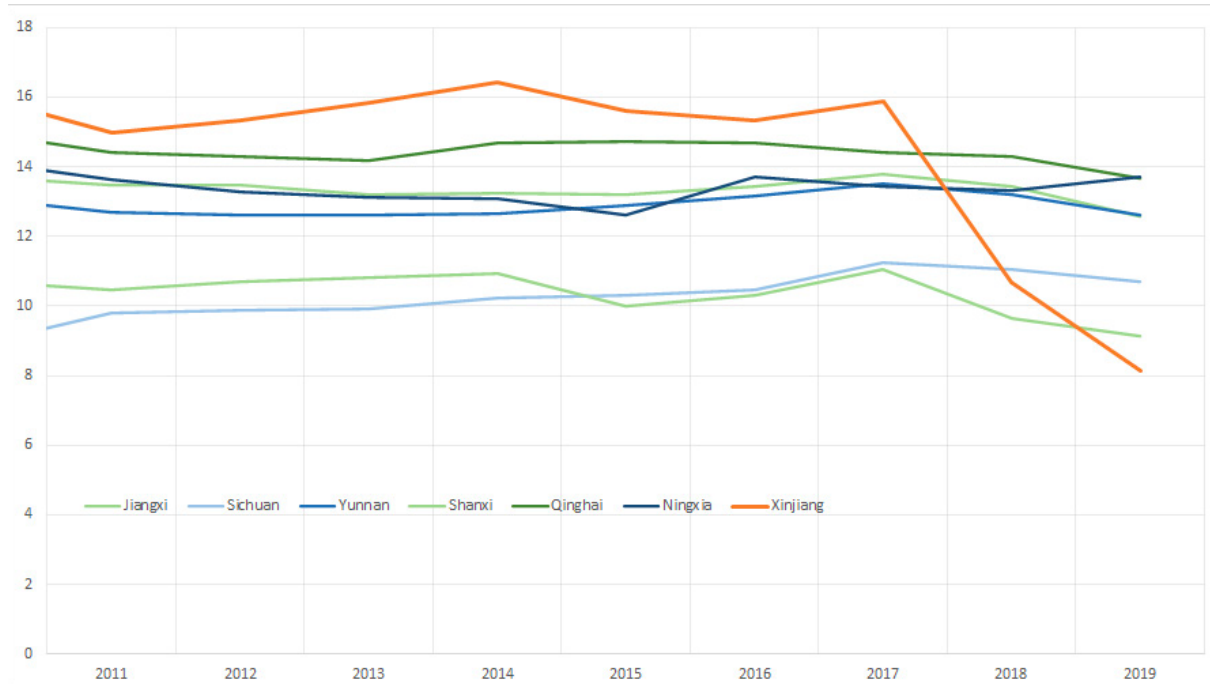
**107. Birth control**

108. In 2016 the Chinese government amended the one child policy introduced in 1979 to allow its citizens to have two children per couple. In 2021 in response to falling birth rates the policy was again changed to allow couples to have three children.
109. The same restrictions had not previously applied to ethnic minorities in Xinjiang, who had been permitted to have two children and in rural and remote areas up to four.
110. In 1949 the Han made up 6.7% of the region's population but a dramatic increase to 41.6% was seen by 1978. However, a combination of low Han birth rates and out-migration caused the Han population to drop to 31.6% by 2018.
111. In contrast between 2005 and 2015 the Uyghur population grew rapidly. This led to a debate within PRC Government and academic circles which consistently described Uyghur and other minority population growth as 'excessive' and between 2015 and 2019 conflated religious extremism and population growth. A May 2015 Government teaching broadcast noted that 'religious extremism begets re-marriages and illegal extra births' and in an academic paper Liao Zhaoyu wrote 'the imbalance of the ethnic minority and Han population composition in Southern Xinjiang has reached an unbelievably serious degree.'
112. In 2017 policy intensified when the government embarked on a region wide campaign; 'regarding continuing to deeper implement the special campaign to control birth violations'.
113. The result was a steep rise in prosecutions and internments (of Uyghurs) for birth control violations as evidenced in official and leaked government papers: the Karakax list identified reasons for imprisonment of individuals for birth control violations as being the most frequent.
114. The authorities deployed an extensive examination programme of Uyghur women of child bearing age, 'testing all who need to be tested'.
115. By 2019 it was planned that over 80% in the rural southern four minority prefectures would be subjected to 'birth control measures with long term effectiveness'. In 2018, Xinjiang fitted 45 times more net-added IUDs per 100,000 of the population than China as a whole (963 vs. 21.5). Between 2015 and 2018,

Xinjiang placed 7.8 times more net-added IUDs per capita than the national average.

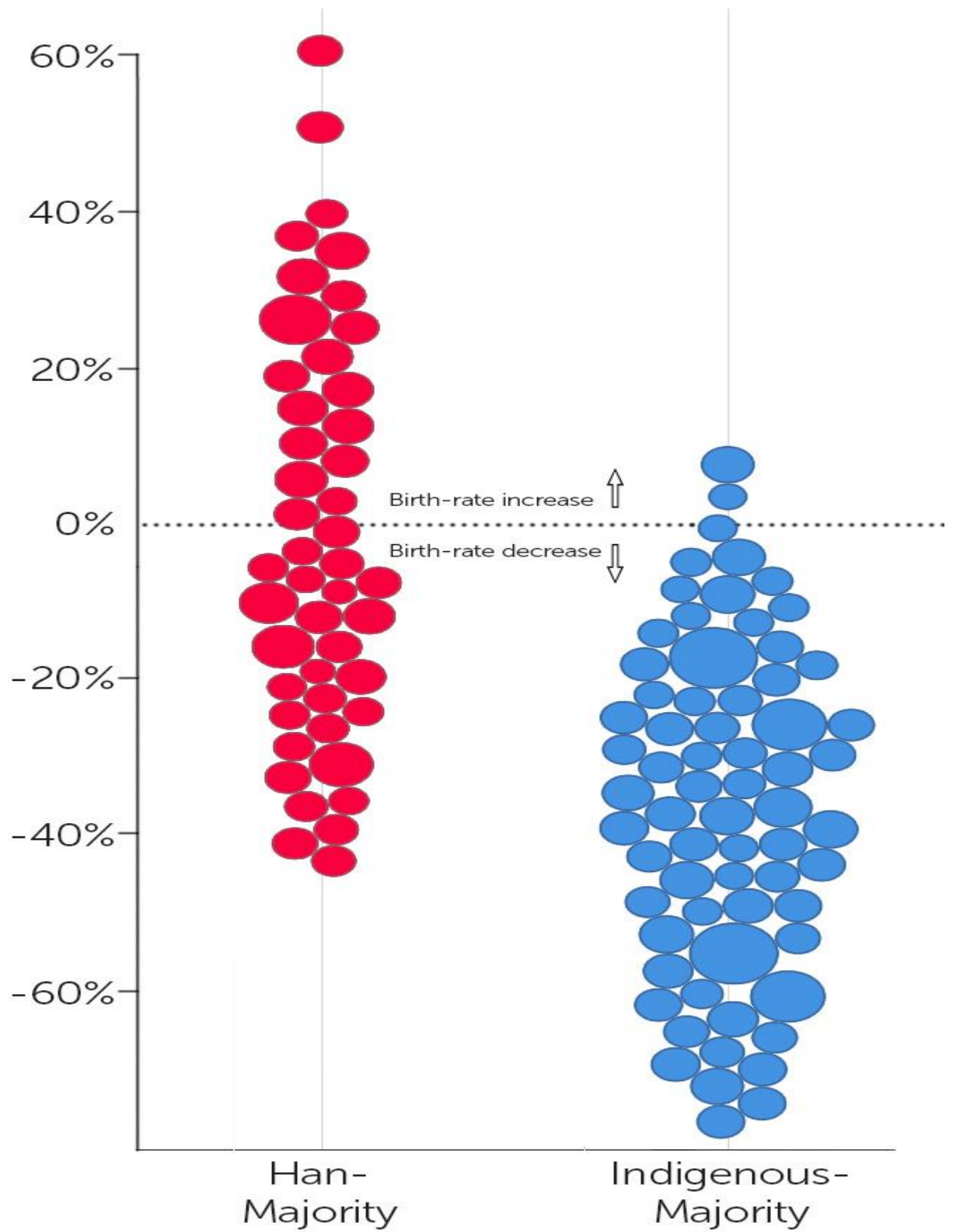
116. In addition in 2019 the authorities formulated a plan to conduct widespread sterilisation including in two counties in Hotan (in the South) intended to sterilise respectively 14.1 and 34.3% of all women of childbearing age.
117. The Tribunal heard evidence from multiple witnesses who had been forced into abortions themselves or, as in the case of one witness, who, when working in a hospital, witnessed the forced abortion of near-term babies. In a 2021 report to the Tribunal, the Uyghur Transitional Justice Data quoted a hospital employee who worked as an obstetrician and witnessed the killing of babies immediately after being born.
118. These policies resulted in a marked reduction in birth rates and a decline in population growth, a reversal of trends evident in the recent past - reducing Han births and increasing Uyghur births. At the region-wide level, birth-rates in Xinjiang remained relatively stable and moderate since creation of the PRC. For the first decade of the one-child policy from 1979 to 1989, the birth-rate in Xinjiang was in fact lower than China's average; under subsequent family-planning policies since 1990 the XUAR's birth-rate stabilised at roughly 125 percent of China's national average but decreased significantly in 2018 and 2019 to 80%. This is illustrated in the figure below comparing population declines in the region with those in provinces including Jianxi, Sichuan, Yunnan, Qinghai and Ningxia all in 'mainland' China.





119. Between 2015 and 2018 the natural population growth rates of Uyghurs in the southern Xinjiang prefectures declined by 73.5%, and by 2018 and 2019 in several counties dropped to zero or became negative.
120. Across the 29 counties with indigenous-majority populations for which we have 2019 or 2020 data, the birth-rate has fallen by 58.5 percent from the 2011-2015 baseline average. In those counties that are over 90 percent indigenous, the birth-rate fell at an even greater rate, showing a 66.3 percent decrease in 2019-2020. For example, 99 percent of the population in Hotan County in southern Xinjiang is Uyghur. Hotan experienced a drop in birth-rate from 25.41 per thousand people in 2012 to 7.41 per thousand in 2018, or a decrease of 70.8 percent. This is the continuation of a distinct pattern across Xinjiang since the region-wide crackdown began, in which birth-rates have decreased drastically and disproportionately in counties with large non-Han populations. The figure below shows the change in crude birth-rate in XUAR from a pre-crackdown baseline to the 2018 birth-rate with counties sorted into Han majority and indigenous-majority.

121. Change in crude birth-rate, XUAR, from a pre-crackdown baseline to the 2018 birth-rate with counties sorted into Han-majority and indigenous-majority.<sup>26</sup>



122. For unstated reasons the authorities ceased publishing significant amounts of population data for the year 2019. In his report to the Tribunal, Dr Zenz set out a range of possible outcomes in regard to the reductive impact of this policy of ‘population optimisation’ as it has been described by the state authorities. Using data extracted from Chinese academic papers including a peer reviewed paper from Xinjiang University he conservatively estimated a projected reduction of the population of between 2.6m and 4.6m or between 20 and 34% of Uyghurs who would have been alive by 2040 when compared to the present population projections had the State not embarked on the policies and actions it has. The Tribunal fully recognises that these are estimates and projected some nineteen years into the future but the *scale* of the State’s interference in the natural reproductivity of the Uyghur population is already manifest and must have a significant impact on the size of that population in due course. The Tribunal accepts Zenz’s broad, if necessarily imprecise, range of projected reductions.

123. Leibold and Ruser explain, the same effect:

‘The crude birth-rate statistics show significant demographic shifts across Xinjiang. There are now hundreds of thousands fewer births in parts of Xinjiang compared with what would have been expected prior to the crackdown, but the missing children are disproportionately in indigenous-majority areas. Based on complete data from 2018, Han-majority counties had, on average, a very slight increase in the birth-rate compared to pre-crackdown levels: around 1,000 more children were born in 2018 than would have been if the birth-rate had stayed static at the pre-2017 baseline. This shows that in Han-majority counties the birth-rate has remained essentially stable. In comparison, almost all indigenous-majority counties had decreases in the number of children born, totalling 162,700 fewer children in 2018 than would have been expected before to the crackdown. In 2019, at least 186,400 fewer children were born in Xinjiang compared to what would have been expected if birth-rates had remained static at the pre-2017 baseline. Although complete county-level data for 2019 has not been released, based on the information that has been published, roughly 95

percent of Xinjiang's missing births in 2019 appear to be in indigenous-majority counties'.

124. The population optimisation strategy has three components; a) in-migration of Han, b) out-transfer of ethnic minorities, with the most effective policy lever being c) a reduction of Uyghur birth rates.

125. The Tribunal is satisfied that the PRC has affected a deliberate, systematic and concerted policy with the objective of 'optimising' the population in Xinjiang by means of a long-term reduction of the Uyghur and other ethnic minority populations to be achieved through limiting and reducing Uyghur births.

126. **Transfer of children.**

127. Between 2017 and 2019 Chinese Government figures record a 43.5% increase to 880,400 primary and middle Uyghur school children being placed in Han-run and Han-staffed boarding schools. This policy was, according to the Xinjiang Education Department, deliberately designed to isolate children from the influences of their families. Parents have been unable to resist the policy and involuntary separation has been widespread, in part because some families have suffered the internment of one or both parents.

128. The Tribunal is satisfied that the PRC has embarked on a deliberate policy of separating children from their families into state care for the purpose of eradicating their Uyghur cultural identity and connections.

129. **Forced labour transfer.**

130. The tribunal has received evidence including by means of satellite imagery of the construction or conversion of hundreds of very large factories, in some cases co-located with internment camps. According to state media, hundreds of thousands of Uyghurs have been inducted into labour programmes including 611,500 in Hotan alone in 2018. The transfers have been within the XUAR and also into 'mainland' China.

131. The Tribunal is satisfied that the PRC has orchestrated a large scale enforced labour programme for more economic development, security, profit, and population 'optimisation' under the officially stated goal of 'poverty alleviation'.

132. Before turning to the law it may be helpful to take a step back from the facts as found and consider the emerging picture from a different angle.

### **THE EVIDENCE OF TON ZWAAN.**

133. Sociologist and genocide expert Dr Ton Zwaan's evidence was taken late.<sup>27</sup> But that allowed, by chance, for its value to come at the best place for the Tribunal's consideration. Most often crimes are defined by a country's lawmakers and such sociological significance as there may be in the *setting* of particular crimes – rape, child abuse offences, drug taking – comes later. For genocide as a crime the sociological understanding came first and, even though Raphael Lemkin's concept was not adopted in full by the UN in 1948, the *selection* of acts to qualify as the *crime* of genocide came later. Four passages from Dr Zwaan's evidence are worth setting out, beginning appropriately with a quotation from Lemkin himself:

134. 'Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killing of all the members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups (...) The objectives of such a plan would be the disintegration of the political and social institutions of culture, language, national feelings, religion, [and] economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups' (Lemkin, 1944: 79).

135. Drawing on scholarship of previous events categorised as genocides Zwaan explains

136. 'In a general sense, genocide might be seen as an organized process of systematic persecution and destruction of a considerable group or category of people by other people, under the auspices of a state or political regime. Who belongs to the target group is defined by the persecutors, and the persecuted are not persecuted for who they individually are, think, do or have done, but exclusively because in the eyes of hostile others they are members of the target group which is to be destroyed. As such, genocides are primarily a consequence of ideological convictions and the power of ruthless political regimes'

137. and, he notes

138. '...but the most well-known, large-scale and vicious genocides of the past century have been the result of three 'families' of political ideology: communism; national-socialism and fascism; and radical ethnic nationalism. To be sure, there are substantial differences between these ideologies and the regimes which espoused them, but they share what I have called elsewhere a 'genocidal infrastructure' of leading ideas, i.e. where such a cluster of ideas is dominant and determines the outlook and policies of the political elite at the helm of the state the chances that mass atrocities and genocidal activities will ensue are high.'

139. Zwaan explains how for China

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<sup>27</sup> Dr Ton Zwaan, retired associate professor of social science and genocide studies at the University of Amsterdam and the Netherlands Institute of War- Holocaust- and Genocide studies (NIOD).

140. 'The Chinese authorities may refrain from genocidal mass killing, but the regime and its security services dispose of many means of what are called 'crushing techniques' – already developed in Mao's time: sharp surveillance, forced 're-education' in 'schools' (detention centers, camps), forced labour, and endless restrictions and harassments. The victims may stay alive, but their freedom of living is nevertheless to a high degree destroyed.'
141. For the sociologist, Dr Zwaan thought, genocide may be rooted, or take root in, many policies with different intentions. He was disinclined to allow for *good* motives of a state to be associated with *bad* where genocide was happening or likely to occur, although protection of a state against terrorists and protection by a state of its borders can always be a legitimate state action, subject to how it is achieved.
142. Finally, for any who think the present allegations of genocide need not be taken seriously because mass killing is not alleged Zwaan reminds us
143. '...intentions are not fixed givens, but they tend to evolve and develop through time. In the case of the murder of the Jews by the German national-socialists it took more than seven years and the outbreak of WWII before their antisemitism culminated in the decision that Jews should be killed. In the Ottoman Empire and nascent Turkish nationalism the idea of massive deportation and killing of the Armenians and other minorities had been brewing for at least two decades before WWI, during which it happened under a radical Turkish nationalist regime, installed by a coup d'état in 1913.'
144. It is unrealistic to think that the legal concept of genocide can be severed completely from its sociological root(s). Indeed, some contemporary arguments for development of genocide's legal scope – consider the Newlines Report above – clearly look for an expansion of scope where the legal test could be met by a number of observed activities, rather compatible with Dr Zwaan's approach that allowed for many policies and intentions. And, as Newlines' Professor Packer accepted in answer to the Tribunal when giving evidence, legally defined genocides are a section of the much larger collection of activities sociologists identify as genocides; *sensing*, from Dr Zwaan, how what is happening to the Uyghurs appears to a sociology genocide expert may not be unhelpful for those having to focus on what *may* be a legally defined one. On intention itself the sociologist's view – expressed firmly in Dr Zwaan's written note – about the difficulty of proving intent is the lawyers' recurring problem in genocide trials. Dr

Zwaan's evidence does not loosen the tests that must apply for any finding of genocide in law; it helps explain why such findings are hard to reach.<sup>28</sup>

## **LAW**

145. The two very distinguished legal experts originally willing to help the Tribunal had to withdraw, completely understandably, on account of the effects sanctions would have - on others not themselves - if they *did* help. It was felt that the Tribunal should not invite new UK lawyers to be any part of the Tribunal's now-sanctioned environment. The Tribunal turned instead to, and was grateful for assistance of, Andrew Khoo from Malaysia, known to the Chair and Vice Chair from the China Tribunal, whose independence and legal skills were valued. He has worked with members of the Counsel team to provide advice about the law that the Tribunal has reduced to a set of sequential directions - as a judge directing a jury might - capable of being understood by lay citizens non-lawyers and non-specialists (correspondence with Andrew Khoo and Counsel is at Appendix \_\_\_\_). The larger-font passages in what follows are the core of the legal direction; the small font passages additional helpful commentary.

146. **For torture proof is required<sup>29</sup>of:**

....any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

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<sup>28</sup> When Jews were taken to concentration camps, those who were strong enough were put to work as forced labourers. The rest including elderly, children, pregnant women, and sick were immediately killed in gas chambers if the camp had them, killed in other ways, or just left to die where gas chambers did not exist. This has implications for the Uyghur case where force labour is valued as much as intent to keep Uyghur numbers down and control

<sup>29</sup> By Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by the PRC in 1988

(Even if the perpetrator's motivation is entirely sexual, it does not follow that the perpetrator does not have the intent to commit an act of torture or that his conduct does not cause severe pain or suffering, whether physical or mental, since such pain or suffering is a likely and logical consequence of his conduct.<sup>30</sup>)

**147. For crimes against humanity proof is required<sup>31</sup> of:**

- a. Commission of certain crimes or prohibited acts when committed as part of a widespread or systematic attack directed against a civilian population. The relevant prohibited acts of crimes against humanity for the purposes of the Tribunal are listed later.
- b. An 'attack' is not limited to the use of force but encompasses any mistreatment of the civilian population.
- c. 'Widespread' refers to the large-scale nature of the attack and the number of targeted persons.
- d. 'Systematic' refers to the 'organized nature of the acts of violence'. The existence of a plan or policy can be indicative of the systematic character of the attack, but it is not a distinct legal element.
- e. The perpetrator – the perpetrator actually doing the relevant act for crimes against humanity - must know that there is a widespread or systematic attack against a civilian population and that his or her acts are part of that attack but need not have detailed knowledge of the attack or share the purpose of it.

**148. For genocide proof is required<sup>32</sup> of:**

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<sup>30</sup> ICTY, *Prosecutor v. Kunarac, Kovac and Vukovic, "Appeals Judgement"*, IT-96-23-T and IT-96-23/1-A, 12 June 2001, para. 153.

<sup>31</sup> Under Customary international law, as codified by Arts. 2 and 3, ILC, draft Articles on Crimes against Humanity provisionally adopted by the ILC at its 67th Session (2015), A/70/10, p.50 and commentary pp.58-72 and Art. 7, Rome Statute of the International Criminal Court (17 July 1998, entered into force 1 July 2002)

<sup>32</sup> Genocide is a norm accepted and recognised by the international community of states as a whole, from which no derogation is permitted. (Art 53, 64 VCLT 1969); According to the International Law Commission (ILC), 'Those peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination' (ILC, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1., pp. 112-113.) Convention on the Prevention and Punishment of the Crime of Genocide, 1948, (entered into force 12 January 1951), art. II.



- a. Certain prohibited acts committed with an intent to destroy, in whole or in part, a protected group, as such; 'as such' meaning that the offence 'requires intent to destroy a collection of people who have a particular group identity'.<sup>33</sup>
  - b. The protected groups are national, ethnical, racial or religious groups and no others.
    - i. The protected group must constitute a collection of people with a particular group identity which must be defined positively and have unique distinguishing characteristics either objectively or subjectively ascertained. If subjective, then from the psyche of the perpetrator, the group should still be, in some form, 'stable' or 'permanent' such that victims cannot ordinarily be dissociated from the group.
    - ii. A protected group cannot be defined negatively.
    - iii. When assessing genocide, the acts or omissions of perpetrators must include at least one of the prohibited acts; other culpable acts such as arbitrary detention, enforced disappearances and other general human rights violations, in and of themselves, are not within scope.
149. The underlying prohibited acts of genocide, each of which is required to be volitional or intentional, are:
- a. killing members of the group;
 

The material elements of killing are equivalent to the elements of murder.
  - b. causing serious bodily or mental harm to members of the group;
 

The bodily or mental harm caused must be of such a serious nature 'as to contribute or tend to contribute' to the destruction of the group. Such harm may include torture, rape, sexual violence, and non-fatal physical violence that causes disfigurement or serious injury to the external or internal organs. The harm must be inflicted intentionally. The harm does not need to be inflicted on each and every member of the group.
  - c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
 

The acts may include: systematic expulsion from homes; denial of medical services; and the creation of circumstances that would lead to a slow death, such as lack of proper housing, clothing, and hygiene or excessive work or physical exertion. The acts must be carried out 'deliberately'.
  - d. imposing measures intended to prevent births within the group;
 

The intended measures may be evidenced, inter alia, by 'sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages'.
  - e. forcibly transferring children of the group to another group;
    - i. The forcible transfer must be of at least one child from the protected group to another. A child is a person under the age of 18.

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<sup>33</sup> See ICTY, Prosecutor v. Milomir Stakić, Appeal Judgment, Case No. IT-97-24-A, Appeals Chamber, 22 March 2006, para.20

- ii. The term 'forcibly' is not confined to physical force but may include other forms of coercion such as threat of violence, psychological pressure, duress and detention.
- 150. Three of the five acts above require proof of a result (namely, killing, causing serious bodily or mental harm and the transfer of children from one group to another). Two do not demand such proof (namely, the conditions of life element and measures intended to restrict births).
- 151. The intent to destroy the protected group, in whole or in part, as such
  - a. The intent required for genocide is a specific intent to destroy, in whole or in part, a protected group, as such. This specific intent distinguishes genocide from other international crimes as it requires that the perpetrator is targeting an individual because they belong to the protected group rather than as an individual per se. Specific intent has been described in the following way: 'For any of the acts charged to constitute genocide, the said acts must have been committed against one or more persons because such person or persons were members of a specific group, and specifically, because of their membership in this group. Thus, the victim is singled out not by reason of his individual identity, but rather on account of his being a member of a national, ethnical, racial or religious group.'
  - b. The specific intent must be directed at the destruction of the protected group. The destruction need not objectively occur but merely be intended.
- 152. The term 'destroy', in respect of the intent requirement, is limited to the physical or biological destruction of all or part of the group.
  - a. This restrictive interpretation has been advanced by the International Law Commission, the jurisprudence of all international courts to date, and some academics. The original basis for this interpretation is said to be found in the preparatory works to the Genocide Convention whereby 'cultural genocide in the form of destroying a group's national, linguistic, religious, cultural, or other existence was ultimately (despite a proposal by the Ad Hoc Committee) not included in the Convention.' Cultural destruction or destruction resulting in 'mere dissolution of the group', therefore, have not been accepted by the ICC, ICTY or ICTR.
  - b. It has been pointed out that where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group. In one case, the Trial Chamber took into account as evidence of intent to destroy the group the deliberate destruction of mosques and houses belonging to members of the group. Specific intent to destroy may thus be found in direct oral and/or written statements made by perpetrators advocating for the destruction of a protected group. However, because direct evidence of intent is, in most cases, lacking, specific intent may be inferred from the surrounding facts and circumstances in which prohibited acts occur. When assessing specific intent, consideration ought to be given to all of the evidence collectively. The circumstances of the case may include: '(a) the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others, (b) the scale of atrocities committed, (c) their general nature, (d) their execution in a region or a country, (e) the fact that the victims were deliberately and systematically chosen on account of their membership of a particular group, (f) the exclusion, in this regard, of members of other groups, (g) the political doctrine which gave rise to the acts referred to, (h) proof of the mental state with respect to the commission of the underlying prohibited acts, (i) the repetition of destructive and discriminatory acts, (j) the existence of a plan or policy, and (k) the perpetration of acts which violate the very foundation of the group or considered as such by their perpetrators. Ordinarily, 'other culpable acts' do not constitute prohibited

acts, but they may be considered as evidence pointing towards the specific intent of a perpetrator to destroy the group. The existence of a plan or policy is not a legal element of the crime of genocide; it may become a possible relevant factor to prove the specific intent. But just the same, evidence of policies or motives of alleged perpetrators may not be reflective or relevant at all to the issue of intent; motive generally is irrelevant. Intent (i.e. a psychological state of mind) must attach to the commission of crimes; policies or motives may, however, be achieved through the commission of crimes.

153. A perpetrator - a top level perpetrator for Genocide - ordering or bringing about the relevant act or acts - must 'clearly seek to produce the act charged', or, in other words, have 'the clear intent to cause the offence'.

It is sufficient that a perpetrator's specific intent is directed at the destruction of the group 'in part' as opposed to the whole. Where only part of a protected group is targeted, that part must constitute a substantial part of that group such that it is significant enough to have an impact on the group, as a whole. In determining substantiality, non-exhaustive considerations may include:

- i. as a starting point, the numerical size of the targeted part (evaluated not only in absolute terms, but also in relation to the overall size of the entire group);
- ii. the prominence of the part of the group within the larger whole; whether the targeted part is emblematic of the overall group or essential to its survival;
- iii. the area of the perpetrators' activity and control; and the perpetrators' potential reach

154. Where an inference is drawn as to specific intent, that inference must be the only reasonable inference from the totality of the evidence.

155. States are prohibited from committing any act of genocide, which means they must refrain from:

- a. the commission of prohibited acts by its own organs, agents and/or officials; and/or
- b. the commission of prohibited acts by others acting on their behalf or at their direction and control.

156. In addition, States as a matter of customary international law and treaty: must not be complicit in prohibited acts committed by others within its State. (Genocide Convention, Art III(e), IV)ii. must use all means reasonably available to prevent genocide and to punish persons where the crime has occurred. (Genocide Convention, Art I, IV) The latter would necessarily entail efforts at investigating whether genocide has occurred and/or is occurring. must enact necessary legislation to give effect to its obligations under the Genocide Convention. (Genocide Convention, Art V).

157. The attribution of crimes to State organs, agents and officials is not to be confused with other duties on States under customary international law or the Convention, as detailed above. For instance, States have an (ongoing) duty to

prevent genocide. That duty necessarily is prior to the commission of genocide and entails a duty to stop (prevent) further prohibited acts once genocide might have begun.

158. In respect of State attribution, a state absent a person (organ, agent or official) cannot commit a crime as the ILC and the ICJ have rejected the notion of state crimes and there is no consistent state practice or significant jurisprudence relating to the same. However, that does not preclude a finding of State responsibility for genocide where no individual has been convicted of the crime

159. With the above advice and commentary on law in mind the Tribunal noted particularly how the words 'destroy' or 'destruction' have no single and unique meanings and are always context -specific<sup>34</sup> and that destruction has to be 'physical or biological destruction'. *Physical* destruction is *in part* sufficiently contextual because killing members of a group would clearly be *physical* destruction - of a kind - of a constituent part of the group. 'Biological destruction' has not, so far as the Tribunal's lawyers have ascertained, ever been adequately defined by any court.

160. The Tribunal found interesting that in the first draft of the Convention in 1947 three categories of genocide were defined:

- a. **Physical** genocide; **Causing the death of members of a group or injuring their health or physical integrity by:**
  - i. **group massacres or individual executions;** or
  - ii. subjection to **conditions of life** which, by lack of proper housing, clothing, food, hygiene and medical care, or excessive work or physical exertion are **likely to result in the debilitation or death of the individuals;** or
  - iii. mutilations and biological experiments imposed for other than curative purposes; or
  - iv. **deprivation of all means of livelihood,** by confiscation of property, looting, curtailment of work, denial of housing and of supplies otherwise available to the other inhabitants of the territory concerned.
- b. **Biological** genocide; Restricting births by:
  - i. **sterilization and/or compulsory abortion;** or
  - ii. **segregation of the sexes;** or
  - iii. **obstacles to marriage.**
- c. **Cultural** genocide; Destroying the specific characteristics of the group by:
  - i. **forcible transfer of children to another human group;** or
  - ii. forced and systematic exile of individuals representing the culture of a group; or
  - iii. prohibition of the use of the national language even in private intercourse; or

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<sup>34</sup> Any inclined to doubt this point should construct some sentences using either word and try them out without embellishment on a willing collaborator: 'I will destroy your garden'; 'I will destroy your company'; 'His reputation faced destruction'; 'the train set and toys had been destroyed' etc. The response, if context has not already been made clear, is likely to be 'how?'

- iv. systematic destruction of books printed in the national language or of religious works or
- v. prohibition of new publications;
- vi. systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.

161. The second draft by the Ad Hoc Committee meeting between April 5 and May 10 1948 included:

Genocide is a crime under international law whether committed in time of peace or in time of war.

a. Article II: [**'Physical and biological' genocide**]

In this Convention genocide means any of the following deliberate acts committed with the intent to destroy a national, racial, religious or political group, on grounds of the national or racial origin, religious belief, or political opinion of its members:

- i. Killing members of the group;
  - ii. Impairing the physical integrity of members of the group;
  - iii. Inflicting on members of the group measures or conditions of life aimed at causing their deaths;
  - iv. **Imposing measures intended to prevent births within the group.**
- b. Article III [**'Cultural' genocide**]
- In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of the national or racial origin or the religious belief of its members such as:
- i. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;
  - ii. Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.
- [bold emphasis added]

162. Later iterations developed from this first draft ended up with the formulation in the Convention (copied in most statutes although some national statutes criminalising genocide have amended or extended the definition):

**Article II**

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group

163. Given that 'destroy' in the Convention as finally formulated is not defined and that there has been limited consideration by courts of the prohibited acts set out in the Convention except in regard to killing, causing serious bodily and mental harm, and deliberately inflicting conditions of life calculated to destroy, members of the group, the Tribunal consider that it might be prudent to have in mind how

biological destruction was first narrowly conceived – even if lawyers tell the Tribunal that it should not.<sup>35</sup>

164. Legal scholars and practitioners often enough argue that there is actually little *need* for the crime of genocide when the present formulation of crimes against humanity usually covers all acts that might constitute genocide and crimes against humanity are equally as serious. The only real difference is the particular intent – state of mind – of the potential offender or offending state. Without *adopting* this argument the Tribunal can observe that it might be unwise to venture into territory where the law is not *absolutely* clear if that lack of clarity<sup>36</sup> might be used to attack the Tribunal’s Judgment and deflect attention from matters of substance that can be dealt with, if at all, as crimes against humanity.

#### **FURTHER CONCLUSIONS NOW FOCUSED ON LEGAL ISSUES**

165. The Tribunal, having reviewed all evidence and made primary findings of fact, considered relevant topics in isolation as set out above, followed relevant parts of the legal advice it has received and reached the following conclusions;

#### **TORTURE.**

166. The Tribunal has considered: acts by which severe pain or suffering whether physical or mental, qualifying as torture have been recorded by every witness giving evidence about detention centres throughout Xinjiang; the failure of any recorded discipline or control of those reported over time as having tortured detainees and those being interviewed; together with the general evidence of top down control in *all* matters - and is satisfied beyond reasonable doubt that torture has been inflicted throughout the period leading up to 2021, by or at the instigation of, or with the consent or acquiescence of, public officials or other persons acting in official capacities of the PRC and/or CCP.

#### **CRIMES AGAINST HUMANITY**

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<sup>35</sup> It is unclear to the Tribunal how, although ‘cultural genocide’ specifically including ‘**forcible transfer of children to another human group**’ in the *first* draft was excluded altogether in *second* and subsequent rounds of drafting the Convention, ‘**Forcibly transferring children of the group to another group**’ reappeared in the limited list of five acts in the final adopted version; wholly unexplained as to what form – physical or biological or other – of destruction it might now be.

<sup>36</sup> For discussion of who benefits from lack of clarity in the law see Appendix \_\_\_\_.

167. For acts to constitute crimes against humanity they have to be part of a widespread and systematic attack directed against a civilian population, with knowledge of the attack.
168. First, was there – is there – an attack on the Uyghurs? Could it simply be that bad things happened to lots of people in the PRC – intense surveillance, being sent to detention centres, being forced to undergo abortions or sterilisation operations - and the Uyghurs were just part of the suffering general public? The number of Uyghurs detained, the number of mosques and graveyards destroyed or rendered unfit for purpose, the sterilisations and abortions, the repression of use of language and practice of religion, the separation of Uyghur children from their parents all show that there was, indeed, an attack on the Uyghurs wholly without justification, even if some of them had sought separation from China and even if some Uyghurs had perpetrated acts of violence, as happened by way of example as in the years 1997 to 2000 and later in Ürümqi in 2000 and in the Kunming train attack of 2014 .’
169. Second, was that attack widespread and systematic? The phrase ‘widespread’ refers to the large- scale nature of the attack and the number of targeted persons, while the phrase ‘systematic’ refers to the organised nature of the acts of violence and the improbability of their random occurrence. The attack on the Uyghurs, has covered a wide geographical area with the construction of detention centres, the destruction of mosques and the interference in the lives of Uyghurs occurring across the entire region. The attack has been dispersed across the XUAR but has been particularly concentrated and impactful in the southern area of Xinjiang which is majority populated by Uyghurs. The attack has been highly organised and systematic including the deployment of an all-pervasive technology-based surveillance system including the Integrated Joint Operations Platform that monitors - by means of artificial intelligence as well as human intervention - every facet of Uyghur life; it is hard to conceive of something more systematic as a means to launch an attack.
170. Reviewing the eleven qualifying acts for crimes against humanity:

- a. Murder; requires proof that the act or omission was committed with intent to kill or cause serious bodily harm to one or more persons. There have been deaths in the penal system caused by neglect, withholding of medical treatment, torture and rape and sexual violence but the Tribunal is unable to attribute the necessary mental state that these deaths were deliberately intended. The fact that they occurred must reflect that the PRC has treated those in its custody with callousness, brutality and cruelty but absent proof of intent the crime against humanity of murder is not proved
- b. Extermination; requires proof that killings constituting murder occur on a mass scale. 'Mass scale' refers primarily to the number of killings, but does not suggest a numerical minimum. There is no evidence of mass killing and therefore the crime against humanity of extermination is not proved.
- c. Enslavement; requires the exercise of any or all powers attaching to ownership over one or more persons, such as by purchasing, selling, lending or bartering. The Tribunal is satisfied that there is evidence of large numbers of people being forced or coerced into labour in factories and other work establishments both within the Xinjiang region and into 'mainland' China but there is no evidence of the exercise of ownership over individuals by, for example, trading them. Therefore the crime against humanity of enslavement is not proved.
- d. Deportation and forcible transfer; forcible transfer being the forcible or coercive displacement of persons from the area in which they are lawfully present, without grounds permitted under international law to another ..... location. The Tribunal received evidence of large scale forced or coercive labour transfers, of villages being knocked down without owners' or occupiers' consents and occupants being relocated, sometimes considerable distances. The crime against humanity of deportation or forcible transfer of population is therefore proved beyond reasonable doubt.
- e. Imprisonment or other severe deprivation of physical liberty; in violation of fundamental rules of international law. The evidence of a million or many



more being imprisoned without any, or any reasonable, cause and without any or any proper process leaves the Tribunal satisfied beyond reasonable doubt that the crime against humanity of imprisonment or severe deprivation of physical liberty is proved.

- f. **Torture**; see above for torture as a free-standing international crime for which the test is similar to the test appropriate for crimes against humanity. The Tribunal is satisfied beyond reasonable doubt that the crime against humanity of torture is proved.
- g. **Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and any other form of sexual violence**; Rape being sexual penetration, however slight of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator where such sexual penetration occurs without the consent of the victim. The definition of rape may also encompass 'invasion' of any part of a victim's body. The perpetrator must intentionally commit the act being aware that the victim does not consent to the act. The Tribunal is satisfied beyond reasonable doubt that the crime against humanity of rape and enforced sterilisation and which may include other forms of sexual violence is proved.
- h. **Persecution**; being acts that discriminate in fact and deny fundamental human rights laid down in international law and are carried out with the intention to discriminate on political, racial, ethnic or religious grounds against any identifiable group or collectively that are universally recognized as impermissible under international law. Evidence of economic deprivation and/ or discrimination of a personal nature, plunder of property, discriminatory judicial and legal practice, restrictions placed on family life, exclusion from certain professions, restrictions placed on rights of citizens coupled with attacks on a civilian population, seizure, collection, segregation, and forced transfer of civilians to camps all constitute acts of persecutions. The Tribunal is satisfied beyond reasonable doubt that the crime against humanity of persecution is proved.

- i. **Enforced disappearances;** being the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. The Tribunal received overwhelming evidence of multiple cases of people missing or disappeared in some cases involving all or most of a family's members. The Tribunal is satisfied beyond reasonable doubt that the crime against humanity of enforced disappearance of persons is proved.
- j. **Apartheid;** The Tribunal did not consider this crime, incompletely articulated in legal authorities to date.
- k. **Inhumane acts;** being the infliction of great suffering, or serious injury to body or to mental or physical health by means of an inhumane act. These crimes are in a 'residual category', which encompasses acts not specifically enumerated. The Tribunal received evidence which it could include within this category including the forcible imposition of Han people into Uyghur family homes, the pervasive surveillance systems installed throughout the region rendering it an open-air prison, the destruction of mosques and cemeteries, the repression of religious and cultural expression and forced or coerced marriages. The Tribunal is satisfied beyond all reasonable doubt that the crime against humanity of other inhumane acts is proved.

**171.** Further, in light of the public way Uyghurs were discriminated against overall, for all facts proved, the Tribunal is satisfied beyond reasonable doubt that perpetrators knew of the widespread or systematic attack against the Uyghur part of the population and that their acts were part of that attack, even if they may not have had *detailed* knowledge of it or shared its purpose.

### **GENOCIDE**

**172.** Recalling that:

- a. There has been limited consideration by courts of the prohibited acts set out in the Convention except in regard to killing, causing serious bodily and mental harm, and deliberately inflicting conditions of life calculated to destroy members of the group;
  - b. 'Biological destruction' has not been adequately and definitively defined;
  - c. There is no legal authority on how to approach multiple and mixed intents and acts, i.e., how to deal with any circumstance where an intention to achieve destruction by one method is delivered by another.
173. For genocide proof is required of:
- a. Certain prohibited acts being committed with an intent to destroy [physically or biologically], in whole or in part, a protected group, as such, the protected groups being national, ethnical, racial or religious groups and no others.
  - b. The protected group being a collection of people with a particular group identity which must be defined positively and have unique distinguishing characteristics either objectively or subjectively ascertained.
174. Recalling:
- a. The intent, or *mens rea*, required for genocide is a specific intent to destroy, in whole or in part, a protected group, as such. This specific intent distinguishes genocide from other international crimes as it requires that the perpetrator is targeting an individual *because* they belong to the protected group rather than as an individual *per se*.
  - b. The specific intent must be directed at the destruction of the protected group. The destruction need not objectively occur but merely be intended.
  - c. Specific intent to destroy may be found in direct oral and/or written statements made by perpetrators advocating for the destruction of a protected group.
  - d. Ordinarily, 'other culpable acts' do not constitute prohibited acts, but they may be considered as evidence pointing towards the specific intent of a perpetrator to destroy the group. In short, and utilising a popular formulation, 'the whole is greater than the sum of its parts.'
175. Remembering in particular that:
- a. The existence of a plan or policy is not a legal element of, nor a requirement for, the crime of genocide but that it *may* become a possible relevant factor to prove the specific intent.
  - b. *Motive* generally is irrelevant.
  - c. Intent (i.e. a psychological state of mind) must attach to the commission of crimes;
  - d. Policies or motives *may*, however, be achieved through the commission of crimes.
  - e. It is sufficient that a perpetrator's specific intent is directed at the destruction of the group 'in part' as opposed to the whole. Where only part of a protected group is targeted, that part must constitute a substantial part of that group such that it is significant enough to have an impact on the group, as a whole. In determining substantiality, non-exhaustive

considerations may include, as a starting point: the numerical size of the targeted part (absolute but also relative to the overall group).

- f. In imposing measures intended to prevent births within the group, the intended measures themselves, together with an intent to biologically destroy, would meet the legal elements for genocide; the actual consequences on future birth rates may not be necessary although such consequences, if they happened, may be instructive for identifying a perpetrator's destructive intent.

176. The Tribunal finds, first, that it is incontrovertible that the Uyghurs are a distinct ethnic, racial and religious group and as such can be defined positively and as a protected group for the purposes of the Genocide Convention.

177. The Tribunal then considered, second, whether there is evidence establishing any or all of the five prohibited acts, necessary for proof of genocide:

- a. **Killing;** There has been evidence of killings in various ways; but the evidence does not show it to have been carried out on a scale that could threaten the *destruction* of the group in whole in part.
- b. **Causing serious bodily or mental harm to members of the group;** there has been considerable harm, both mental and physical, done to this group including by rape, torture, separation of the children from their families, destruction of their places of worship, suffocating surveillance, forced labour, razing of their homes, dehumanisation and persecution; but the Tribunal is unable to conclude that the State intended to *destroy* them by means of such harm.
- c. **Deliberately inflicting on the group conditions of life calculated to bring about its destruction;** there has been systematic expulsion from homes, in prison withholding of medical attention and the provision of meagre amounts of food of poor nutritional value, rape and torture of prisoners, generally there has been surveillance as a condition of life so that in combination acts that may and most likely have damaged the health and longevity of those to whom it is done; but the Tribunal was unable to conclude that this threatens the *destruction* of the group.

- d. Imposing conditions intended to prevent birth; the PRC has put in place a comprehensive system of measures to 'optimise' the population in Xinjiang with a particular focus on the southern region which is majority Uyghur populated. It has sought to rebalance the respective Han and Uyghur populations increasing the former and reducing the latter by orchestrating in-migration of Han, out-migration of Uyghurs for labour purposes but most effectively by reducing the birth rates and population growth of Uyghurs. This may even result in a reduction of the *overall* population over time. The tools of its policy include sterilisation by removal of wombs, widespread forced insertion of effectively removable IUDs equating to mandatory sterilisation and forced abortions. These policies will result in significantly fewer births in years to come than might otherwise have occurred. The population of Uyghurs in future generations will be smaller than it would have been without these policies. This will result in a partial destruction of the Uyghurs. In accordance with the Genocide Convention's use of the word 'destroy' this satisfies a prohibited act required for the proof of genocide but leaves unresolved whether the State *intended* this destruction and, if it did, whether the part to be destroyed was a sufficient part.
- e. Forcibly transferring children; the PRC has removed thousands, maybe hundreds of thousands of children from the care of their families sometimes with one or both of their parents imprisoned. These children, sometimes as young as a few months, have been placed in Han-run state institutions including boarding schools and orphanages. Some parents have not known where their children are or even whether they are alive or dead. These children have not only been removed from their homes and communities but from their cultures. These acts are grave threats to the integrity of the Uyghur group and could be a means by which the State could effect its destruction over the longer term; but the law has not been sufficiently

developed for the Tribunal to conclude that they qualify as one of the acts of intended destruction.<sup>37</sup>

178. The general caution exercised by the Tribunal in making determinations about genocide referred to at paragraph 163 above was especially active when the ‘intention’ element of the crime was considered. It is clear that ‘destruction’ – even articulated as ‘physical and biological destruction’ – does not have a unique meaning and it is easy to imagine circumstances where an intention to destroy by one means might be associated with an inconsistent destructive act, itself consistent with some *different* but unproved intention. The Tribunal has taken into account all of the policies and conduct concerning birth control measures exercised by the PRC and is satisfied beyond reasonable doubt that imposing measures to prevent Uyghur births matched the revealed *intention* of the PRC leadership’s policies, explained at paragraphs 79-96 above – that had evolved into plans at every level of regional, local and community government – to reduce the Uyghur population thereby to destroy it *to an extent* by birth control and sterilisation.

179. Thus, and so far:

**In the judgment of the Uyghur Tribunal:**

180. **Torture** of Uyghurs attributable to the PRC is established beyond reasonable doubt

181. **Crimes against humanity** attributable to the PRC is established beyond reasonable doubt by acts of: deportation or forcible transfer; imprisonment or other severe deprivation of physical liberty; torture; rape and other sexual violence; enforced sterilisation; persecution; enforced disappearance; and other inhumane acts.

182. As to **genocide**, and as will be clear from paragraphs 176-178 above, all elements of an intended genocide to be accomplished by a Convention-listed act imposing measures to prevent births within the group are established, subject only

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<sup>37</sup> The fact that ‘forcible transfer of children’ was included in the first draft of the Convention in 1947 under ‘cultural genocide’, was missing from subsequent drafts but then reappeared under a (presumed) different category of genocide reinforces the Tribunal’s caution. It is unfortunate that definition sections were not a part of the Convention.

to whether the 'part' subject of the intended destruction would qualify. If the 'part' is sufficiently large then genocide would be proved.

183. The Tribunal recognises that this may be the first public evidence-based determination of a genocide under Article II(d) of the Convention (or of crimes under statutes in similar terms).

184. The Tribunal would, as a whole, prefer *not* to make such a finding and to allow findings of genocide in law to match more closely the likely general public understanding of the word.

185. The Tribunal recognises that a finding of genocide based on control of childbirth may even seem to some close to lawful management by governments of societies elsewhere; in the back of some minds might be awkward and uncomfortable considerations of worldwide unsustainable population growth.

186. Between 1945 and 1948 men and women who had had experience of one, and usually two, world wars and wanted to save us from the worst that we could do to ourselves, drafted, among other things, the Universal Declaration of Human Rights and the Genocide Convention. In the drafting process of the Convention, other possible modes of genocide - for example of political groups - were decidedly left out but 'imposing measures intended to prevent births' was decidedly left in. It would be defiant of the wisdom of those men and women, whose experience of the worst of humanity was *personal*, *not* to find a breach of the Convention *if* one is proved.

187. The Tribunal feels some unease about making findings of this crime on the basis of evidence that links the crime to the very highest political figure of a country. It would seem altogether more appropriate for such things to be dealt with by governments or international organisations.

188. But governments have no courage to do such things; neither does the UN where a powerful state is involved.

189. And so it falls to this Tribunal to make clear on the basis of the findings above that the 'unborn' part of the Uyghur ethnicity of Xinjiang - calculated by consideration of the likely numbers of Uyghurs in years to come measured against the likely number of Uyghurs there *would* have been had the Uyghurs not been

treated in the way they were by measures to prevent births - constitutes a 'substantial part' for purposes of the Genocide Convention.

190. Accordingly, on the basis of evidence heard in public, the Tribunal is satisfied beyond reasonable doubt that the PRC, by the imposition of measures to prevent births intended to *destroy* a significant part of the Uyghurs in Xinjiang as such, has committed genocide.

191. This Judgment, with no evidence of any *mass* killing, *may* be thought to diminish the perceived status of genocide as a crime. In one way it *may* do that, and if so, in *one* way, not *necessarily* a bad thing. The use of superlatives - 'worlds gravest crime' and hyperbole - 'crime of crimes' - when attached to tragedy brings public attention, sometimes at a cost to other tragedies able to attract less attention despite being as serious. The suffering of the Uyghurs has attracted public attention by superlative and hyperbolic expressions of concern for reasons that may not be entirely clear. Other suffering that *has* included large-scale killings - of those without religious affiliation killed in North Korea, of the Christians killed in Nigeria of Yazidi men and women in Syria - but with no or less ability to have the label 'genocide' attached to their suffering have found it harder to gather public sympathy and support. And *most* of those affected in Xinjiang, it should be recalled, are still alive and their lives may, at some stage, improve beyond how they presently are.

192. Further, in truth, genocide is *not* necessarily the worst of all possible crimes: activating a dirty bomb in a city might be no genocide despite the death and devastation it would cause; the 'Twin Towers' attack was terrorism but not genocide.

193. Why should what has been happening to the Uyghurs be taken so seriously?

194. The Genocide Convention was concerned, at its creation in 1948, with the survival not of individuals but of groups - of national, ethnic, racial and religious groups. It looked *forward* to how they might be saved from destruction and to stimulating actions in support of their existence even before a first act of destruction may have occurred. That ambition, it might be thought, is as important today as then. Ours is a world of many nations, ethnicities, races and religions, all



of which are entitled to survive, all of which are supported by the Universal Declaration of Human Rights,<sup>38</sup> none of which is to be extinguished.

195. But some might say that what happens in Xinjiang is merely the encouragement to assimilation of groups, assimilation being something that has happened naturally throughout recorded history and that for the PRC might bring greater security of borders and a country of single character. Such thinking might be misguided, given the experience of so many ethnicities to survive despite attack, but assimilation by 'encouragement'/force would set at nought the value of diversity experienced everywhere in everything humans do and how they live.

196. Even without Dr Zwaan's important observation about how long *murderous* genocides may take to develop, it can be said that the method of genocide identified in this Judgment – a genocide the intention for which is evidenced by other crimes of humanity and the use of torture – is indeed grave. Even if some of the surrounding support for the Uyghurs – in governments and parliaments and the media – may have been driven in part by envy of China's success, by fear of China and to many in the West, or its unfamiliar political system, their support was justified.

197. The Tribunal, nevertheless, makes no recommendations.

198. The Tribunal has no power of any kind to sanction the PRC or individuals in the PRC. It assumes politicians, civil society, NGOs and powerful individuals who may have some powers of sanction and who can make their voices heard on issues to which this Judgment may relate, will do so. Much of the material dealt with by

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<sup>38</sup>Article 1 All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3 Everyone has the right to life, liberty and security of person.

Article 15 (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 18 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

the Tribunal has been, for some time, in the public domain from other sources and it could reasonably have been *expected* that governments, organisations and businesses interacting with the PRC will have *already* factored in what was revealed in that material and now in this Judgment.

199. And it is worth recalling that the US government through Secretary of State Pompeo and his successor Secretary of State Blinken *have* asserted genocide has been occurring although without revealing evidence or reasoning on which the assertion is based. Some sanctions *have* been imposed by the USA, the EU, the UK and other countries in respect of human rights abuses by the PRC<sup>39</sup> but without a clear link to that clear undertaking in Article I of the Convention to prevent if possible and the to act *at the instant* a state learns of, or should have learned of a serious risk that genocide will be committed
200. Staying with the accusers, those several parliaments that found genocide by the PRC reached accurate conclusions even *without* the weight of evidence considered by the Tribunal. Perhaps governments of *their* countries that have *not* acted under their Convention undertakings should now be more respectful of their legislators' opinions.
201. It is unfortunate that no efforts have been made by those or other countries to have the issue dealt with at the ICJ, as might happen if a country had the courage to take the matter there notwithstanding the PRC's reservation concerning that court's jurisdiction. Maybe the reservation would now be found *not* to be of effect; maybe the PRC, if confident of its position, would not want to hide, as if in shame, behind the reservation.
202. From the PRC's and CCP's points of view, there is no appeal from the Judgment of this people's tribunal – or from the other opinions adverse to the PRC. They all stand unless corrected.

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<sup>39</sup> The European Union, United Kingdom and Canada imposed sanctions on Chinese officials and entities for human rights violations in Xinjiang. The European Union targeted four Chinese officials, along with the Xinjiang Public Security Bureau. The United Kingdom and Canada did the same. The United States placed sanctions on top Chinese officials as part of a multinational effort to punish Beijing for human rights abuses against the largely Muslim Uyghur minority group.

203. China is one of the oldest continuous civilizations existing today and yet it faces determinations supported by evidence that would show it to be – in part and that part its government not its people – to be wholly wicked. The determinations cover a period when the PRC has been establishing itself as the most powerful nation on earth, or soon to be the most powerful. It is the most populous and perhaps the most financially successful of nations. Was conduct of which the Tribunal has heard and read *necessary* for it to achieve what is clearly within its ambitious grasp? Might China, instead, have achieved all it seeks – and to have become a country to envy, emulate and admire – *without* being in its approach towards the Uyghurs, as this Judgment reveals, *inhumane*? May what the Tribunal has been dealing with have been avoidable, unnecessary human tragedy – sad in the extreme for all observers to behold; devastating and worse to have experienced as victim. Could the wonderful, diverse entity of China have expected better of itself? Could we have expected better of China?
204. The PRC is said to want to expand its influence economically and by other means. It has – within grasp – an even greater power to influence the world by submission of its actions to the world’s highest courts – the ICJ and the ICC; it would be leadership by *example*; a willingness to expose conduct of state or individuals to international public review, something the rest of the world’s *citizens* might want even if something that their own governments – especially if governments of large and powerful states – might fear.<sup>40</sup>
205. Before the PRC should reject the idea, given the worldwide concerns about treatment of the Uyghurs and other Turkic Muslims and now this Judgment, might it on behalf of its 1.4 billion citizens, consider just what those in *other* countries who buy T-shirts of cotton coming from Xinjiang, computers from other parts of China and so on must think of a country that: fears its own people using their intellects freely; that applies barbaric methods of torture to people as if hoping to change their minds for good, or perhaps just to get them to conform for a time

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<sup>40</sup> It is always the biggest and most powerful countries – China, Russia, USA etc – that appear to want supervision to be of other countries while their own escape oversight – as the USA did with any criminality in Vietnam, or Russia for the great famine. Until this immunity and impunity end any well-ordered world-order remains for the mere citizen a distant dream.

through fear; that squashes a million and more of its people together into cells so small they cannot all even lie down to rest; that so coarsens its citizens working in detention centres as to allow women citizens to be raped or gang raped and men to be raped when in the custody of the state.

206. Those not from China understand that preserving what in translation is called 'face' is of critical importance to all in China, leaders and followers. Does the PRC think this conduct does anything to preserve 'face' and dignity? Does it think those from foreign lands will be unaffected by the truth that has emerged and emerges further in this Judgment? Will its leaders – and its citizens – really keep 'face' as these facts are ever better known?<sup>41</sup> Might its own citizens prefer to see this Judgment and other opinions adverse to the PRC subject to international scrutiny?

207. The Tribunal's work – lasting a little over a year and accomplished with *pro bono* or lightly paid researchers and otherwise wholly dependent on the unpaid contributions of very many people – has been comparatively straightforward. It is work that has been done in the shortest time possible because it is recognised that making public gross wrongs committed in other countries *can* have positive effect even without actual government-to-government or UN-to-government confrontation. It is work the product of which *may* now limit the brutality of crimes against humanity and genocide demonstrated in various forms, that may save lives, may allow the unborn to be born, may save women from having their ability to give life brutally destroyed. Once *needing* to be done, as the work done by the Tribunal was, it had to be done urgently.<sup>42</sup>

208. A final reflection. If rights are truly universal then they are matched by *universal* duties. And those duties are personal. Not only is your right as an immediate neighbour your neighbour's duty to uphold but your neighbour's right – even on the other side of the planet – is similarly your duty to uphold, if ever possible. International bodies, nation states and large NGOs deliver some parts of the

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<sup>41</sup> German citizens after WWII, even those born after the war ended were for many decades to live personally burdened by Germany's national shame

<sup>42</sup> And it is worth observing how the same work could have been done much more swiftly, thus to achieve earlier and perhaps greater good, by teams of paid employees working for a government ministry. Might that have used government capacity and resources better than challenging even the possibility of making a genocide determination at all, when resisting an amendment to the Trade Bill in 2021 that would have outlawed make *any* trade agreement with a genocidal state.

citizen's duty, but that does not mean that personal duty, to be honoured citizen-to-citizen wherever possible, does not exist. That personal duty *can* be delivered in part through the ballot box that elects leaders who do, or often do not, respect and support the rights of citizens everywhere. The personal duty includes choices of how and where to deploy influence, and of how to spend money and time, of where to study and with whom. If the citizen is left - by governments or other bodies that avoid finding and revealing certain truths - uncertain about events near or far away then a citizen's duty that might be activated is suppressed. That is why when governments avoid the Genocide Convention undertaking it is appropriate for citizens, as in this Tribunal, to do what governments fear to do, which is no more than to fill a gap in knowledge that could and should have been filled by others.

209. The Tribunal has respected the PRC and its people, recognising that there are significant differences of culture between them and citizens of Western democracies, differences in the approach of PRC citizens to authoritarian government even to the point of accepting levels of government violence against its own citizens. It has, accordingly, considered only the clearest breaches of international standards and law to which the PRC is fully committed, acting with caution and care to reach its decisions.

210. Maybe the public, whom the Tribunal serves - better informed of world affairs if less experienced in the realities of war than the drafters of the 1948 documents - would have more concern for victims in far-off lands than their leaders might expect. Maybe *they* could see sense in having a document easier to apply than the Genocide Convention, such as a convention to prevent crimes against humanity, to drive their own countries to act *without delay* when a million and more are interned in order for their minds, born free, to be trained to follow a single line of thinking, their bodies to be at the disposal of those who would rape or torture, their rights to bring new life into the world curtailed not just in the genocidal way identified but by effective separation of the sexes through forced labour, by their children created in human relationships lost not through death but through non-human alienation achieved by being entered into a model making machine. Maybe

they, more than their political leaders and international bodies, know that wherever and whenever gross human suffering occurs, action must follow. From the needless suffering of fellow citizens anywhere in the world it can never be right to look away<sup>43</sup>.

Sir Geoffrey Nice (Chair)

Nick Vetch (Vice-Chair)

Tim Clark

Professor Raminder Kaur

Professor Dame Parveen Kumar

Professor David Linch

Professor Ambreena Manji

Professor Audrey Osler

Catherine Roe

CHURCH HOUSE WESTMINSTER.

9th December 2021.

*"In the 'transformation-through-education' camps, life and death do not mean the same thing as they do elsewhere. A hundred times over I thought, when the footfalls of guards woke us in the night, that our time had come to be executed. When a hand viciously pushed clippers across my skull, and other hands snatched away the tufts of hair that fell on my shoulders, I shut my eyes, blurred with tears, thinking my end was near, that I was being readied for the scaffold, the electric chair, drowning. Death lurked in every corner. When the nurses grabbed my arm to 'vaccinate' me, I thought they were poisoning me. In reality, they were sterilising us. That was when I understood the method of the camps, the strategy being implemented: not to kill us in cold blood, but to make us slowly disappear. So slowly that no one would notice."*<sup>44</sup>

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<sup>43</sup> 'Never look away' a phrase borrowed from the title of a Florian Henckel von Donnersmarck film, without other thematic connections being implied.

<sup>44</sup>, *Rescapée du Goulag Chinois (Survivor of the Chinese Gulag)* by Gulbahar Haitiwaji, co-authored with Rozenn Morga. 'Our souls are dead': how I survived a Chinese 're-education' camp for Uighurs," trans. Edward Gauvin, *The Guardian*, January 12, 2021, <https://www.theguardian.com/world/2021/jan/12/uighur-xinjiang-re-education-camp-china-gulbahar-haitiw-aji>. Quoted in the United States Holocaust Memorial Museum report titled 'To Make Us Slowly Disappeared.

